

**State of Washington
Employment Security Department
Olympia, Washington 98504**



LAWS AND RULES

As Amended 2005

EMS 10030 (Rev. 3/05)

**Title 50 RCW
Unemployment Compensation**

50.01	General Provisions	
50.01.005	Short title.....	2
50.01.010	Preamble	2
50.04	Definitions	
50.04.020	Base year—Alternative base year	3
50.04.030	Benefit year	3
50.04.040	Benefits	4
50.04.050	Calendar quarter.....	4
50.04.060	Commissioner	4
50.04.070	Contributions.....	4
50.04.072	Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.....	5
50.04.073	Contributions—As including "payments in lieu of contributions"—Scope	5
50.04.075	Dislocated worker	5
50.04.080	Employer.....	5
50.04.090	Employing unit.....	5
50.04.100	Employment.....	6
50.04.110	Employment—Situs of service.....	6
50.04.115	Employment—Out-of-state service, election	6
50.04.116	Employment—Out-of-state, when included—"American employer" defined	6
50.04.120	Employment—Localized service	7
50.04.125	Employment—Foreign degree-granting institutions—Employee services localized in country of domicile	7
50.04.140	Employment—Exception tests.....	7
50.04.145	Employment—Services performed for contractor, when excluded.....	7
50.04.148	Employment—Services performed by musician or entertainer.....	8
50.04.150	Employment—Agricultural labor.....	8
50.04.155	Service performed in agricultural labor for farm operator or crew leader.....	8
50.04.160	Employment—Domestic service.....	9
50.04.165	Employment—Corporate officers—Election of coverage.....	9
50.04.170	Employment—Maritime service	9
50.04.180	Family employment	9
50.04.205	Services performed by aliens	9
50.04.206	Employment—Nonresident alien.....	10
50.04.210	Employment—Foreign governmental service.....	10
50.04.220	Employment—Service covered by federal act.....	10
50.04.223	Employment—Massage practitioner.....	10
50.04.225	Employment—Barber and cosmetology services.....	10
50.04.230	Employment—Services of insurance agent, broker, or solicitor, real estate broker or real estate salesman, and investment company agent or solicitor.....	10
50.04.232	Employment—Travel services	10
50.04.235	Employment—Outside salesman paid by commission	11
50.04.240	Employment—Newsboy's service.....	11
50.04.245	Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency	11
50.04.255	Employment—Appraisal practitioner services.....	11
50.04.265	Employment—Indian Tribes.....	11
50.04.270	Employment—Casual labor	11
50.04.280	Employment—"Pay period" determination.....	11
50.04.290	Employment office.....	11
50.04.293	Misconduct.....	12
50.04.294	Misconduct—Gross misconduct	12
50.04.295	Payments in lieu of contributions.....	12
50.04.300	State	12
50.04.310	Unemployed individual—Individual deemed not "unemployed.".....	13
50.04.320	Wages, remuneration.....	13
50.04.323	Wages, remuneration—Government or private retirement pension plan payments— Effect upon eligibility—Reduction in benefits.....	14
50.04.330	Wages, remuneration—Retirement and disability payments excepted.....	14
50.04.335	Wages, remuneration—Stock transfers excepted	15
50.04.340	Wages, remuneration—Death benefits excepted.....	15
50.04.350	Wages, remuneration—Excepted payments.....	15

**Title 50 RCW
Unemployment Compensation**

50.04.355	Wages, remuneration—Average annual wage—Average weekly wage— Average annual wage for contributions purposes.....	15
50.04.360	Week	16
50.06	Temporary Total Disability	
50.06.010	Purpose.....	17
50.06.020	Allowable beneficiaries.....	17
50.06.030	Application for initial determination of disability—Special base year—Special individual benefit year	17
50.06.040	Laws and regulations governing amounts payable and right to benefits	18
50.06.050	Use of wages and time worked for prior claims—Effect	18
50.06.900	Application of chapter—Recipients of industrial insurance or crime victims compensation	18
50.06.910	Partial invalidity of chapter	18
50.08	Establishment of Department	
50.08.010	Employment security department established	19
50.08.020	Divisions established.....	19
50.08.030	Administration of family services and programs.....	19
50.12	Administration	
50.12.010	Commissioner's duties and powers.....	20
50.12.020	Personnel appointed by commissioner.....	20
50.12.031	Personnel board—Travel expenses of board	20
50.12.040	Rule-making authority	20
50.12.042	Rules—2003 2nd sp.s. c 4.....	21
50.12.045	Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications	21
50.12.050	Reciprocal benefit arrangements	21
50.12.060	Reciprocal coverage arrangements.....	21
50.12.070	Employing unit records and reports—Unified business identifier account number records.....	21
50.12.080	Arbitrary reports.....	22
50.12.090	Interstate use of employing unit records	22
50.12.100	Compulsory production of records and information	22
50.12.120	Protection against self-incrimination.....	22
50.12.130	Oaths and witnesses	22
50.12.140	Destruction of office records.....	22
50.12.150	Representation by attorney general.....	23
50.12.160	Publication of title, rules and regulations, etc	23
50.12.170	Services and fees of sheriffs.....	23
50.12.180	State-federal cooperation	23
50.12.190	Employment stabilization.....	23
50.12.200	State advisory council—Committees and councils	24
50.12.210	Employment services for handicapped—Report to legislative committees.....	24
50.12.220	Penalties for late reports or contributions—Assessment—Appeal.....	24
50.12.230	Job skills training program—Department's duties.....	25
50.12.235	Washington conservation corps—Department's duties	25
50.12.240	On-the-job training—Employer qualifications established by rule	25
50.12.245	Cooperation with work force training and education coordinating board	25
50.12.250	Information clearinghouse to assist in employment of persons of disability	25
50.12.252	Information clearinghouse—Consultation on establishment.....	25
50.12.280	Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation.....	25
50.13	Records and Information--Privacy and Confidentiality	
50.13.010	Legislative intent and recognition	26
50.13.015	Information held private and confidential—Requests for disclosure	26
50.13.020	Information or records deemed private and confidential—Release when required by federal program.....	26
50.13.030	Rules	26
50.13.040	Access of individual or employing unit to records and information.....	26
50.13.050	Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception	27
50.13.060	Access to records or information by governmental agencies	27
50.13.070	Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas	29

**Title 50 RCW
Unemployment Compensation**

50.13.080	Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties.....	29
50.13.090	Disclosure of records or information to contracting governmental or private organizations.....	29
50.13.100	Disclosure of records or information where identifying details deleted or individual or employing unit consents.....	29
50.13.900	Construction.....	29
50.13.905	Severability—1977 ex.s. c 153.....	29
50.13.910	Legislative designation and placement.....	29
50.16	Funds	
50.16.010	Unemployment compensation fund—Administrative contingency fund— Federal interest payment fund.....	30
50.16.015	Federal interest payment fund—Establishment.....	31
50.16.020	Administration of funds—Accounts.....	31
50.16.030	Withdrawals from federal unemployment trust fund.....	32
50.16.040	Management of funds upon discontinuance of federal unemployment trust fund.....	32
50.16.050	Unemployment compensation administration fund.....	33
50.16.060	Replacement of federal funds.....	33
50.16.070	Federal interest payment fund—Employer contributions—When payable— Maximum rate—Deduction from remuneration unlawful.....	33
50.16.080	Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees.....	34
50.20	Benefits and Claims	
50.20.010	Benefit eligibility conditions.....	35
50.20.011	Profiling system to identify individuals likely to exhaust benefits— Confidentiality of information—Penalty.....	36
50.20.012	Rules—1995 c 381.....	36
50.20.020	Waiting period credit limitation.....	36
50.20.041	Health care professionals who have contracted hepatitis C—Training.....	36
50.20.042	Unemployed aerospace workers—Training.....	36
50.20.043	Training provision.....	36
50.20.044	Ineligibility for benefits for failure to attend job search workshop or training course.....	37
50.20.050	Disqualification for leaving work voluntarily without good cause.....	37
50.20.060	Disqualification from benefits due to misconduct.....	38
50.20.065	Cancellation of hourly wage credits due to felony or gross misdemeanor.....	39
50.20.066	Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct.....	39
50.20.070	Disqualification for misrepresentation.....	39
50.20.080	Disqualification for refusal to work.....	39
50.20.085	Disqualification for receipt of industrial insurance disability benefits.....	39
50.20.090	Strike or lockout disqualification—When inapplicable.....	40
50.20.095	Disqualification for attending school or institution of higher education.....	40
50.20.098	Services performed by alien.....	40
50.20.099	Training Benefits—Eligibility to work in the United States.....	41
50.20.100	Suitable work factors.....	41
50.20.110	Suitable work exceptions.....	41
50.20.113	Unemployment of sport or athletic event participant during period between sport seasons.....	41
50.20.115	Unemployment due to vacation.....	41
50.20.117	Jury service.....	42
50.20.118	Unemployment while in approved training.....	42
50.20.119	Part-time workers.....	42
50.20.120	Amount of benefits.....	42
50.20.130	Deduction from weekly benefit amount.....	43
50.20.140	Filing applications and claims—Definitions.....	43
50.20.150	Notice of application or claim.....	44
50.20.160	Redetermination.....	44
50.20.170	Payment of benefits.....	44
50.20.180	Denial of benefits.....	44
50.20.190	Recovery of benefit payments.....	45
50.20.191	Authority to compromise benefit overpayments.....	46
50.20.192	Collection of benefit overpayments, limitation of actions.....	46
50.20.193	Chargeoff of uncollectible benefit overpayments.....	46
50.20.195	Assessed interest—Use.....	46

**Title 50 RCW
Unemployment Compensation**

50.20.200	Nonliability of state.....	46
50.20.210	Notification of availability of basic health plan	46
50.20.220	Federal income tax deduction and withholding—Notice—Rules	46
50.20.230	Electronic labor exchange system	47
50.20.240	Job search monitoring	47
50.22	Extended and Additional Benefits	
50.22.010	Definitions.....	48
50.22.020	Application of statute and rules—Eligibility for extended benefits	49
50.22.030	Extended benefit eligibility conditions—Interstate claim	50
50.22.040	Weekly extended benefit amount.....	50
50.22.050	Total extended benefit amount—Reduction.....	51
50.22.060	Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment.....	51
50.22.105	Supplemental additional benefits—February 26, 1994, through December 31, 1995—Eligibility	51
50.22.130	Training benefits program—Intent.....	51
50.22.140	Employment security department authorized to pay training benefits—Expenditures.....	52
50.22.150	Training benefits—Eligibility—Payment—Local work force development council to identify declining and high demand occupations and skill sets—Rules	52
50.24	Contributions by Employers	
50.24.010	Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration	55
50.24.014	Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions	55
50.24.015	Wages—Deemed paid when contractually due.....	56
50.24.020	Authority to compromise	56
50.24.030	Contributions erroneously paid to United States or another state.....	57
50.24.040	Interest on delinquent contributions	57
50.24.050	Lien for contributions generally	57
50.24.060	Lien in event of insolvency or dissolution	57
50.24.070	Order and notice of assessment	58
50.24.080	Jeopardy assessment.....	58
50.24.090	Distrain, seizure, and sale.....	58
50.24.100	Distrain procedure.....	58
50.24.110	Notice and order to withhold and deliver	58
50.24.115	Warrant—Authorized—Filing—Lien—Enforcement.....	59
50.24.120	Collection by civil action	59
50.24.125	Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof.....	59
50.24.130	Contractor's and principal's liability for contributions—Exceptions	60
50.24.140	Collection remedies cumulative	60
50.24.150	Contribution adjustments and refunds.....	60
50.24.160	Election of coverage	60
50.24.170	Joint accounts.....	61
50.24.180	Injunction proceedings	61
50.24.190	Limitation of actions	61
50.24.200	Chargeoff of uncollectible accounts.....	61
50.24.210	Contributions due and payable upon termination or disposal of business—Successor liability	61
50.29	Employer Experience Rating	
50.29.010	Definitions.....	62
50.29.020	Experience rating accounts—Benefits not charged.....	62
50.29.021	Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004	63
50.29.025	Contribution rate	64
50.29.026	Modification of contribution rate	67
50.29.027	Benefit ratio computed for 1985 and thereafter.....	68
50.29.030	"Wages" defined for purpose of prorating benefit charges.....	68
50.29.041	Contribution rate—Solvency surcharge	68
50.29.062	Contribution rates for predecessor and successor employers	68
50.29.065	Notice of benefits paid and charged to employer's account.....	69
50.29.070	Notice of employer benefit charges and rate of contribution—Review and appeal	69

**Title 50 RCW
Unemployment Compensation**

50.29.080	Redetermination and correction of employer's contribution rate.....	69
50.32	Review, Hearings and Appeals	
50.32.010	Appeal tribunals.....	71
50.32.020	Filing of benefit appeals.....	71
50.32.025	Mailed appeal or petition.....	71
50.32.030	Appeal from order and notice of assessment.....	71
50.32.040	Benefit appeal procedure.....	72
50.32.050	Contributions appeal procedure.....	72
50.32.060	Conduct of appeal hearings.....	72
50.32.070	Petition for review by commissioner.....	72
50.32.075	Waiver of time for appeal or petition.....	73
50.32.080	Commissioner's review procedure.....	73
50.32.090	Finality of commissioner's decision.....	73
50.32.095	Commissioner's decisions as precedents—Publication.....	73
50.32.097	Applicability of finding, determination, etc., to other action.....	73
50.32.100	Costs.....	73
50.32.110	Fees for administrative hearings.....	73
50.32.120	Procedure for judicial review.....	73
50.32.130	Undertakings on seeking judicial review.....	73
50.32.140	Interstate petitions to Thurston county.....	74
50.32.150	Jurisdiction of court.....	74
50.32.160	Attorneys' fees.....	74
50.32.170	Decision final by agreement.....	74
50.32.180	Remedies of title exclusive.....	74
50.32.190	Costs, charges, and expenses.....	74
50.36	Penalties	
50.36.010	Violations generally.....	75
50.36.020	Violations by employers.....	75
50.36.030	Concealing cause of discharge.....	75
50.38	Labor Market Information and Economic Analysis	
50.38.010	Intent.....	76
50.38.015	Definitions.....	76
50.38.020	Occupational information responsibility—Forecast, criteria.....	76
50.38.030	Occupational forecast—Agency consultation.....	77
50.38.040	Annual report.....	77
50.38.050	Department—Duties.....	77
50.38.060	Department—Powers.....	77
50.38.065	Moneys for nonfunded labor market information costs—Disposition.....	77
50.38.900	Effective date—1982 c 43.....	78
50.38.901	Conflict with federal requirements—1993 c 62.....	78
50.38.902	Effective date—1993 c 62.....	78
50.40	Miscellaneous Provisions	
50.40.010	Waiver of rights void.....	79
50.40.020	Exemption of benefits.....	79
50.40.040	No vested rights.....	79
50.40.050	Child support obligations.....	79
50.40.065	"Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules.....	80
50.40.066	Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account.....	80
50.44	Special Coverage Provisions	
50.44.010	Religious, charitable, educational or other nonprofit organizations—Exemption— Payments.....	82
50.44.020	Instrumentalities of this state, other states, political subdivisions.....	82
50.44.030	Political subdivisions, instrumentalities of this state and other state.....	82
50.44.035	Local government tax.....	83
50.44.037	"Institution of higher education" defined.....	83
50.44.040	Services excluded under "employment" for certain purposes.....	83
50.44.050	Benefits payable, terms and conditions—"Academic year" defined.....	84

**Title 50 RCW
Unemployment Compensation**

50.44.053	"Reasonable assurance" defined—Presumption, employees of educational institutions	85
50.44.055	Finding—Intent—Reasonable assurance, application to employees of educational institutions	86
50.44.060	Nonprofit organization employees—Financing of benefits—Election of payments in lieu of contributions	86
50.44.070	Election to make payments in lieu of contributions—Bond or deposit	88
50.44.080	Construction—Compliance with federal unemployment tax act, department of labor guidelines.....	88
50.44.090	Construction—Mandatory coverage of employees of political subdivision under 1977 ex.s. c 292	88
50.50	Indian Tribes	
50.50.010	Employment	90
50.50.020	Benefits—Generally	90
50.50.030	Contributions—Election of payments in lieu of contributions	90
50.50.040	Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices	90
50.50.050	Notices—Contents	91
50.50.060	Extended benefits—Financing by Indian tribe	91
50.50.070	Indian tribes subject to same terms and conditions as other employers	91
50.50.900	Conflict with federal requirements—2001 1st sp.s. c 11	91
50.50.901	Severability—2001 1st sp.s. c 11	91
50.50.902	Effective date—2001 1st sp.s. c 11	91
50.50.903	Retroactive application—2001 1st sp.s. c 11	91
50.60	Shared Work Compensation Plans—Benefits	
50.60.010	Legislative intent	92
50.60.020	Definitions.....	92
50.60.030	Compensation plan—Criteria for approval	92
50.60.040	Compensation plan—Approval or rejection—Resubmission.....	93
50.60.050	Approved plan—Misrepresentation—Penalties	93
50.60.060	Approved plan—Effective date—Expiration	93
50.60.070	Approved plan—Revocation—Review of plans	93
50.60.080	Approved plan—Modification	93
50.60.090	Shared work benefits—Eligibility.....	93
50.60.100	Benefits—Weekly amount—Maximum entitlement—Claims—Conditions.....	93
50.60.110	Benefits—Charge to employers' experience rating accounts.....	94
50.60.120	Benefits—Exhaustee	94
50.60.900	Title and rules to apply to shared work benefits—Conflict with federal requirements	94
50.60.901	Rules	94
50.60.902	Effective date—1983 c 207.....	94
50.62	Special Employment Assistance	
50.62.010	Legislative findings.....	95
50.62.020	Definitions.....	95
50.62.030	Job service program or activity	96
50.62.040	Annual report—Wage and benefit history	96
50.65	Washington Service Corps	
50.65.010	Legislative findings.....	97
50.65.020	Definitions.....	97
50.65.030	Washington service corps established—Commissioner's duties	98
50.65.040	Washington service corps—Criteria for enrollment.....	98
50.65.050	Washington service corps—List of local youth employment opportunities	98
50.65.060	Washington service corps—Placement under work agreements	98
50.65.065	Work agreements—Requirements	99
50.65.070	Enrollees not to displace current workers.....	99
50.65.080	Commissioner to seek assistance for Washington service corps	99
50.65.090	Authority for income-generating projects—Disposition of income	99
50.65.100	Work agreements—Nondiscrimination.....	99
50.65.110	Enrollees—Training and subsistence allowance—Medical insurance and medical aid— Notice of coverage	99
50.65.120	Exemption of enrollees from unemployment compensation coverage	99
50.65.130	Federal and private sector funds and grants	99
50.65.138	Use of funds for enrollees and projects in distressed areas—Service corps	99
50.65.143	Limitation on use of funds for administration—Service corps.....	100
50.65.150	Washington service corps scholarship account—Created—Use	100

**Title 50 RCW
Unemployment Compensation**

50.65.200	Washington serves—Findings—Declaration	100
50.65.210	Washington serves—Definitions	100
50.65.220	Washington serves—Program—Created—Procedure—Intent	101
50.65.230	Washington serves—Applicants—Eligibility	101
50.65.240	Washington serves—Disqualification for Washington service corps participation	101
50.65.250	Washington serves—Volunteers—Selection—Placement	101
50.65.260	Washington serves—Volunteers—Support	101
50.65.270	Washington serves—Volunteers—Medical benefits—Benefit limits	102
50.65.280	Washington serves—Displacement of current workers prohibited	102
50.65.290	Washington serves—Volunteers—Unemployment compensation coverage limited	102
50.65.300	Washington serves—Volunteers—Assistance to defer student loan payments	102
50.65.310	Washington serves—Volunteers—Subsequent development of skills and experience—Recognition	102
50.65.320	Washington serves—Service placement—Work agreements—Contracts— Rules for agencies—Financial support for organizations	102
50.65.330	Washington serves—Gifts, grants, endowments—Matching funds	102
50.65.901	Conflict with federal requirements—1983 1st ex.s. c 50	103
50.65.902	Severability—1983 1st ex.s. c 50	103
50.65.903	Conflict with federal requirements—1987 c 167	103
50.65.904	Severability—1987 c 167	103
50.65.905	Effective date—1987 c 167	103
50.65.906	Conflict with federal requirements—1993 sp.s. c 7	103
50.65.907	Short title—1993 sp.s. c 7	103
50.65.908	Severability—1993 sp.s. c 7	103
50.70	Programs for Dislocated Forest Products Workers	
50.70.030	Employment opportunities—Benefits	104
50.70.040	Recruitment—Career orientation services—Career counseling	104
50.70.050	Department of natural resources duties	104
50.70.900	Severability—1991 c 315	104
50.70.901	Conflict with federal requirements—1991 c 315	104
50.70.902	Effective date—1991 c 315	104
50.72	Youthbuild Program	
50.72.010	Legislative findings	105
50.72.020	Definitions	105
50.72.030	Commissioner's duties—Education and employment training grants	105
50.72.040	Education and employment training grants—Eligibility activities	105
50.72.050	Participation time limits—Educational services and activities requirement	106
50.72.060	Grant applications—Requirements	106
50.72.070	Grant applications—Information required—Evaluation reports	106
50.98	Construction	
50.98.010	Saving clause—1945 c 35	107
50.98.020	Appointments and regulations continued	107
50.98.030	Actions commenced under prior laws	107
50.98.040	Acts repealed	107
50.98.050	Conflicting acts repealed	107
50.98.060	Repealed acts not reenacted	107
50.98.070	Separability of provisions—1945 c 35	107
50.98.080	Effective date—1945 c 35	107
50.98.100	Base year wages to include remuneration paid for previously uncovered services	107
50.98.110	Compliance with federal unemployment tax act—Internal references—Interpretation	108

**Title 19.85 RCW
Regulatory Fairness Act**

19.85	Regulatory Fairness Act	
19.85.011	Finding	109
19.85.020	Definitions	109
19.85.025	Application of chapter—Limited	109
19.85.030	Agency rules—Small business economic impact statement—Reduction of costs imposed by rule	109
19.85.040	Small business economic impact statement—Purpose—Contents	110
19.85.050	Agency plan for review of business rules—Scope—Factors applicable to review—Annual list	110
19.85.061	Compliance with federal law	111
19.85.070	Small business economic impact statement—Notice of proposed rule	111
19.85.900	Severability—1982 c 6	111

**Title 34.05 RCW
Administrative Procedure Act**

34.05	Administrative Procedure Act	
34.05.001	Legislative intent	113
	Part I--General Provisions	
34.05.010	Definitions	113
34.05.020	Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation	114
34.05.030	Exclusions from chapter or parts of chapter	114
34.05.040	Operation of chapter if in conflict with federal law	115
34.05.050	Waiver	115
34.05.060	Informal settlements	115
34.05.070	Conversion of proceedings	115
34.05.080	Variation from time limits	115
34.05.090	Forest practices board—Emergency rules	116
34.05.100	Respectful language	116
	Part II--Public Access to Agency Rules	
34.05.210	Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice	116
34.05.220	Rules for agency procedure—Indexes of opinions and statements	116
34.05.230	Interpretive and policy statements	117
34.05.240	Declaratory order by agency—Petition	117
34.05.250	Model rules of procedure	118
34.05.260	Electronic distribution	118
	Part III--Rule-Making Procedures	
34.05.310	Prenotice inquiry—Negotiated and pilot rules	118
34.05.312	Rules coordinator	119
34.05.313	Feasibility studies—Pilot projects	119
34.05.314	Rules development agenda	120
34.05.315	Rule-making docket	120
34.05.320	Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education	120
34.05.322	Scope of rule-making authority	121
34.05.325	Public participation—Concise explanatory statement	121
34.05.328	Significant legislative rules, other selected rules	122
34.05.330	Petition for adoption, amendment, repeal—Agency action—Appeal	124
34.05.335	Withdrawal of proposal—Time and manner of adoption	124
34.05.340	Variance between proposed and final rule	124
34.05.345	Failure to give twenty days notice of intended action—Effect	125
34.05.350	Emergency rules and amendments	125
34.05.353	Expedited rule making	125
34.05.360	Order adopting rule, contents	126
34.05.362	Postadoption notice	126
34.05.365	Incorporation by reference	127
34.05.370	Rule-making file	127
34.05.375	Substantial compliance with procedures	127
34.05.380	Filing with code reviser—Register—Effective dates	127
34.05.385	Rules for rule making	128
34.05.390	Style, format, and numbering—Agency compliance	128
34.05.395	Format and style of amendatory and new sections—Failure to comply	128

**Title 34.05 RCW
Administrative Procedure Act**

Part IV--Adjudicative Proceedings	
34.05.410	Application of Part IV 128
34.05.413	Commencement—When required 128
34.05.416	Decision not to conduct an adjudication 128
34.05.419	Agency action on applications for adjudication 129
34.05.422	Rate changes, licenses 129
34.05.425	Presiding officers—Disqualification, substitution 129
34.05.428	Representation 130
34.05.431	Conference—Procedure and participation 130
34.05.434	Notice of hearing 130
34.05.437	Pleadings, briefs, motions, service 130
34.05.440	Default 130
34.05.443	Intervention 130
34.05.446	Subpoenas, discovery, and protective orders 131
34.05.449	Procedure at hearing 131
34.05.452	Rules of evidence—Cross-examination 131
34.05.455	Ex parte communications 132
34.05.458	Separation of functions 132
34.05.461	Entry of orders 132
34.05.464	Review of initial orders 133
34.05.467	Stay 133
34.05.470	Reconsideration 133
34.05.473	Effectiveness of orders 134
34.05.476	Agency record 134
34.05.479	Emergency adjudicative proceedings 134
34.05.4791	Secure community transition facility—Proceeding concerning public safety measures 134
34.05.482	Brief adjudicative proceedings—Applicability 135
34.05.485	Brief adjudicative proceedings—Procedure 135
34.05.488	Brief proceedings—Administrative review—Applicability 135
34.05.491	Brief proceedings—Administrative review—Procedures 135
34.05.494	Agency record in brief proceedings 135
Part V--Judicial Review and Civil Enforcement	
34.05.510	Relationship between this chapter and other judicial review authority 135
34.05.514	Petition for review—Where filed 135
34.05.518	Direct review by court of appeals 136
34.05.522	Refusal of review by court of appeals 136
34.05.526	Appellate review by supreme court or court of appeals 137
34.05.530	Standing 137
34.05.534	Exhaustion of administrative remedies 137
34.05.542	Time for filing petition for review 137
34.05.546	Petition for review—Contents 137
34.05.550	Stay and other temporary remedies 137
34.05.554	Limitation on new issues 138
34.05.558	Judicial review of facts confined to record 138
34.05.562	New evidence taken by court or agency 138
34.05.566	Agency record for review—Costs 138
34.05.570	Judicial review 139
34.05.574	Type of relief 139
34.05.578	Petition by agency for enforcement 140
34.05.582	Petition by others for enforcement 140
34.05.586	Defenses, limitations on 140
34.05.588	Enforcement of agency subpoena 140
34.05.590	Incorporation of other judicial review provisions 141
34.05.594	Review by higher court 141
34.05.598	Frivolous petitions 141
Part VI--Legislative Review	
34.05.610	Joint administrative rules review committee—Members—Appointment—Terms—Vacancies 141
34.05.620	Review of proposed rules—Notice 141
34.05.630	Review of existing rules—Policy and interpretive statements, etc.—Notice—Hearing 142
34.05.640	Committee objections to agency intended action—Statement in register and WAC— Suspension of rule 142

**Title 34.05 RCW
Administrative Procedure Act**

34.05.650	Recommendations by committee to legislature.....	142
34.05.655	Petition for review.....	142
34.05.660	Review and objection procedures—No presumption established.....	143
34.05.665	Submission of rule for review—State employees protected.....	143
34.05.671	Reports—Advisory boards—Staff.....	143
34.05.675	Inspection of properties—Oaths, subpoenas, witnesses, depositions.....	143
34.05.681	Enforcement—Committee subpoena—Refusal to testify.....	143

Part IX--Technical Provisions

34.05.900	Captions and headings.....	144
34.05.901	Severability—1988 c 288.....	144
34.05.902	Effective date—Application—1988 c 288.....	144
34.05.903	Severability—1998 c 280.....	144

**Title 34.12 RCW
Office of Administrative Hearings**

34.12	Office of Administrative Hearings	
34.12.010	Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal.....	145
34.12.020	Definitions.....	145
34.12.030	Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office.....	146
34.12.035	State patrol disciplinary hearings.....	146
34.12.037	Human rights commission proceedings.....	146
34.12.038	Local government whistleblower proceedings.....	146
34.12.039	Local government whistleblower proceedings—Costs.....	146
34.12.040	Hearings conducted by administrative law judges—Criteria for assignment.....	146
34.12.050	Administrative law judge—Motion of prejudice against—Request for assignment of.....	146
34.12.060	Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings.....	146
34.12.070	Record of hearings.....	147
34.12.080	Procedural conduct of hearings—Rules.....	147
34.12.090	Transfer of employees and equipment.....	147
34.12.100	Salaries.....	147
34.12.110	Application of chapter.....	147
34.12.120	Appointment of chief administrative law judge.....	147
34.12.130	Administrative hearings revolving fund—Created, purposes.....	147
34.12.140	Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher.....	147
34.12.150	Accounting procedures.....	147
34.12.160	Direct payments by agencies, when authorized.....	148

**Title 42.17 RCW
Disclosure—Campaign Finances—Lobbying—Records**

42.17	Disclosure—Campaign Finances—Lobbying—Records	
42.17.310	Certain personal and other records exempt.....	149

**Title 43.05 RCW
Technical Assistance Programs**

43.05	Technical Assistance Programs	
43.05.005	Findings.....	158
43.05.010	Definitions.....	158
43.05.020	Agency programs—List of technical assistance providers.....	158
43.05.030	Technical assistance visit—Notice of violation.....	158
43.05.040	Time to correct violations—Revisit—Issuance of penalties.....	159
43.05.050	Issuance of penalty during technical assistance visit.....	159
43.05.060	Department of ecology—Notice of correction.....	159

Chapter

TABLE OF CONTENTS

Page

**Title 43.05 RCW
Technical Assistance Programs**

43.05.070	Department of ecology—Penalty	159
43.05.080	Application of RCW 43.05.060 and 43.05.070—Limited.....	159
43.05.090	Department of labor and industries—Consultative visit, report—Compliance inspection citation	159
43.05.100	Departments of agriculture, fish and wildlife, health, licensing, natural resources— Notice of correction.....	160
43.05.110	Departments of agriculture, fish and wildlife, health, licensing, natural resources—Penalty	160
43.05.120	Time for compliance—Extension	160
43.05.130	Educational programs.....	160
43.05.140	Pilot voluntary audit program	160
43.05.150	Agency immunity—Enforcement authority	161
43.05.901	Conflict with federal requirements.....	161
43.05.902	Resolution of conflict with federal requirements—Notification	161
43.05.903	Part headings not law—1995 c 403.....	161
43.05.904	Severability—1995 c 403.....	161
43.05.905	Findings—Short title—Intent—1995 c 403	161

**Title 51.08 RCW
Definitions**

51.08	Definitions	
51.08.150	"Permanent partial disability"	162
51.08.160	"Permanent total disability"	162

**Title 51.32 RCW
Compensation—Right to and Amount**

51.32	Compensation—Rights to and Amount	
51.32.060	Permanent total disability compensation—Personal attendant.....	163
51.32.090	Temporary total disability—Partial restoration of earning power—Return to available work— When employer continues wages—Limitations	163

**Title 72.09 RCW
Department of Corrections**

72.09	Department of Corrections	
72.09.100	Inmate work program—Classes of work programs—Participation—Benefits.....	167

**Title 74.20A RCW
Support of Dependent Children—Alternative Method—1971 Act**

74.20A	Support of Dependent Children—Alternative Method—1971 Act	
74.20A.090	Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined	171

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.01** General provisions.
- 50.04** Definitions.
- 50.06** Temporary total disability.
- 50.08** Establishment of department.
- 50.12** Administration.
- 50.13** Records and information—Privacy and confidentiality.
- 50.16** Funds.
- 50.20** Benefits and claims.
- 50.22** Extended and additional benefits.
- 50.24** Contributions by employers.
- 50.29** Employer experience rating.
- 50.32** Review, hearings, and appeals.
- 50.36** Penalties.
- 50.38** Labor market information and economic analysis.
- 50.40** Miscellaneous provisions.
- 50.44** Special coverage provisions.
- 50.50** Indian tribes.
- 50.60** Shared work compensation plans—Benefits.
- 50.62** Special employment assistance.
- 50.65** Washington service corps.
- 50.70** Programs for dislocated forest products workers.
- 50.72** Youthbuild program.
- 50.98** Construction.

Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty: RCW 49.44.100.

Displaced homemaker act: Chapter 28B.04 RCW.

Industrial insurance: Title 51 RCW.

Job skills training program: RCW 28C.04.400 through 28C.04.420.

Unfair practices of employment agencies: RCW 49.60.200.

Chapter 50.01 RCW

GENERAL PROVISIONS

Sections

50.01.005 Short title.
50.01.010 Preamble.

50.01.005 Short title. This title shall be known and may be cited as the "Employment Security Act." [1953 ex.s. c 8 § 24; 1945 c 35 § 1; Rem. Supp. 1945 § 9998-140.]

50.01.010 Preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [2003 2nd sp.s. c 4 § 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

Conflict with federal requirements—2003 2nd sp.s. c 4: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2003 2nd sp.s. c 4 § 36.]

Severability—2003 2nd sp.s. c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 2nd sp.s. c 4 § 37.]

Effective date—2003 2nd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 2nd sp.s. c 4 § 39.]

Chapter 50.04 RCW

DEFINITIONS

Sections

- 50.04.020 Base year—Alternative base year.
- 50.04.030 Benefit year.
- 50.04.040 Benefits.
- 50.04.050 Calendar quarter.
- 50.04.060 Commissioner.
- 50.04.070 Contributions.
- 50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.
- 50.04.073 Contributions—As including "payments in lieu of contributions"—Scope.
- 50.04.075 Dislocated worker.
- 50.04.080 Employer.
- 50.04.090 Employing unit.
- 50.04.100 Employment.
- 50.04.110 Employment—Situs of service.
- 50.04.115 Employment—Out-of-state service, election.
- 50.04.116 Employment—Out-of-state service, when included—"American employer" defined.
- 50.04.120 Employment—Localized service.
- 50.04.125 Employment—Foreign degree-granting institutions—Employee services localized in country of domicile.
- 50.04.140 Employment—Exception tests.
- 50.04.145 Employment—Services performed for contractor, when excluded.
- 50.04.148 Employment—Services performed by musician or entertainer.
- 50.04.150 Employment—Agricultural labor.
- 50.04.155 Service performed in agricultural labor for farm operator or crew leader.
- 50.04.160 Employment—Domestic service.
- 50.04.165 Employment—Corporate officers—Election of coverage.
- 50.04.170 Employment—Maritime service.
- 50.04.180 Family employment.
- 50.04.205 Services performed by aliens.
- 50.04.206 Employment—Nonresident alien.
- 50.04.210 Employment—Foreign governmental service.
- 50.04.220 Employment—Service covered by federal act.
- 50.04.223 Employment—Massage practitioner.
- 50.04.225 Employment—Barber and cosmetology services.
- 50.04.230 Employment—Services of insurance agent, broker, or solicitor, real estate broker or real estate salesman, and investment company agent or solicitor.
- 50.04.232 Employment—Travel services.
- 50.04.235 Employment—Outside salesman paid by commission.
- 50.04.240 Employment—Newsboy's service.
- 50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency.
- 50.04.255 Employment—Appraisal practitioner services.
- 50.04.265 Employment—Indian tribes.
- 50.04.270 Employment—Casual labor.
- 50.04.280 Employment—"Pay period" determination.
- 50.04.290 Employment office.
- 50.04.293 Misconduct.
- 50.04.294 Misconduct—Gross misconduct.
- 50.04.295 Payments in lieu of contributions.
- 50.04.300 State.
- 50.04.310 Unemployed individual—Individual deemed not "unemployed."
- 50.04.320 Wages, remuneration.
- 50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits.
- 50.04.330 Wages, remuneration—Retirement and disability payments excepted.
- 50.04.335 Wages, remuneration—Stock transfers excepted.
- 50.04.340 Wages, remuneration—Death benefits excepted.
- 50.04.350 Wages, remuneration—Excepted payments.
- 50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.
- 50.04.360 Week.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year—Alternative base year. "Base year" with respect to each individual, shall mean either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Computations using the last four completed calendar quarters shall be based on available wage items processed as of the close of business on the day preceding the date of application. The department shall promptly contact employers to request assistance in obtaining wage information for the last completed calendar quarter if it has not been reported at the time of initial application. [1994 c 3 § 1; 1987 c 278 § 1; 1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998-142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1994 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 3 § 4.]

Severability—1994 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 3 § 5.]

Effective dates—1994 c 3: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 3, 1994.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1994.

(3) Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [February 26, 1994]." [1994 c 3 § 6.]

Effective date—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: PROVIDED, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 ex.s. c 2 § 25.]

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty-two consecutive week period

beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: PROVIDED, HOWEVER, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the last separation from employment immediately before the application for initial determination in the previous benefit year if the applicant was an unemployed individual at the time of application, or since the initial separation in the previous benefit year if the applicant was not an unemployed individual at the time of filing an application for initial determination for the previous benefit year, of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1991 c 117 § 1; 1990 c 245 § 1. Prior: 1987 c 278 § 2; 1987 c 256 § 1; 1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143; prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1991 c 117: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the

state or the granting of federal unemployment tax credits to employers in this state." [1991 c 117 § 5.]

Severability—1991 c 117: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 117 § 6.]

Effective dates—1991 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and sections 1 and 4 [of this act] shall take effect July 1, 1991, and section 3 [of this act] shall take effect July 7, 1991, for new claims filed on or after July 7, 1991." [1991 c 117 § 7.]

Conflict with federal requirements—1990 c 245: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1990 c 245 § 11.]

Effective dates—1990 c 245: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1990].

(2) Sections 2, 3, and 6 through 9 of this act shall take effect on July 1, 1990." [1990 c 245 § 12.]

Effective dates—Construction—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature: PROVIDED, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Effective dates—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 8, 1973]. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998-144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998-145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998-146. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.070 Contributions. "Contributions" means the money payments due to the state unemployment compensation fund as provided in RCW 50.24.010, to the federal inter-

est payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014. [1985 ex.s. c 5 § 4; 1983 1st ex.s. c 13 § 9; 1971 c 3 § 1; 1951 c 215 § 1; 1945 c 35 § 8; Rem. Supp. 1945 § 9998-147. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state. The terms "contributions" and "payments in lieu of contributions" used in this title, whether singular or plural, designate the money payments to be made to the state unemployment compensation fund, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014 and are deemed to be taxes due to the state of Washington. [1985 ex.s. c 5 § 5; 1983 1st ex.s. c 13 § 10; 1971 c 3 § 3; 1959 c 266 § 8.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Construction—1959 c 266: "The provisions of section 8 of this amendatory act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions nor as affecting any proceeding instituted thereunder." [1959 c 266 § 9.]

50.04.073 Contributions—As including "payments in lieu of contributions"—Scope. The term "contributions" as used in this title shall be deemed to include "payments in lieu of contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil and criminal sanctions. [1983 1st ex.s. c 23 § 1; 1971 c 3 § 4.]

Conflict with federal requirements—1983 1st ex.s. c 23: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1983 1st ex.s. c 23 § 26.]

Effective dates—Construction—1983 1st ex.s. c 23: "(1) Sections 6, 8, 17, 18, 19, and 25 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect as follows:

(a) Sections 17, 18, 19, and 25 of this act shall take effect on June 30, 1983;

(b) Sections 6 and 8 of this act shall take effect on July 3, 1983, and shall be effective for benefit years commencing on or after that date.

(2) Sections 4 and 13 of this act shall take effect on October 1, 1983.

(2004 Ed.)

Sections 7, 11, and 12 of this act shall also take effect on October 1, 1983, and shall be effective for all weeks of benefits paid on or after that date." [1983 1st ex.s. c 23 § 27.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.075 Dislocated worker. "Dislocated worker" means any individual who:

(1) Has been terminated or received a notice of termination from employment;

(2) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

(3) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry. [1984 c 181 § 1.]

Dislocated worker's eligibility for benefits: RCW 50.20.043.

50.04.080 Employer. "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title. [1985 c 41 § 1; 1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998-148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1985 c 41: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 41 § 2.]

Severability—1985 c 41: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 41 § 3.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.090 Employing unit. "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977 which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010. [2001 1st sp.s. c 11 § 1; 1983 1st ex.s. c 23 § 2; 1977 ex.s. c 73 § 1; 1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998-149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

[Title 50 RCW—page 5]

Conflict with federal requirements—Severability—Effective date—Retrospective application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.100 Employment. "Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

Except as provided by RCW 50.04.145, personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of RCW 50.04.140, shall be considered employment of the employing unit: PROVIDED, HOWEVER, That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor. [1982 1st ex.s. c 18 § 14; 1945 c 35 § 11; Rem. Supp. 1945 § 9998-150. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.110 Employment—Situs of service. The term "employment" shall include an individual's entire service performed within or without or both within and without this state, if

- (1) The service is localized in this state; or
- (2) The service is not localized in any state, but some of the service is performed in this state, and
 - (a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or
 - (b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or
 - (3) The service is performed within the United States, the Virgin Islands or Canada, if
 - (a) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and
 - (b) the place from which the service is directed or controlled is in this state. [1971 c 3 § 6; 1945 c 35 § 12; Rem. Supp. 1945 § 9998-151. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.115 Employment—Out-of-state service, election. Services not covered under RCW 50.04.110 or 50.04.116 which are performed entirely without this state, with respect to no part of which contributions, interest, or penalties are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this title if the individual performing such services is a resident of this state

and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this title. [1983 1st ex.s. c 23 § 3; 1971 c 3 § 8; 1945 c 35 § 13; Rem. Supp. 1945 § 9998-152. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1937 c 162 § 19. Formerly RCW 50.04.130.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.116 Employment—Out-of-state service, when included—"American employer" defined. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and in the case of the Virgin Islands after December 31, 1971 and prior to January 1 of the year following the year in which the United States secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed "employment" under the provisions of RCW 50.04.110 or 50.04.120 or the parallel provisions of another state's law), if:

- (1) The employer's principal place of business in the United States is located in this state; or
- (2) The employer has no place of business in the United States but:
 - (a) The employer is an individual who is a resident of this state; or
 - (b) The employer is a corporation which is organized under the laws of this state; or
 - (c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
 - (3) None of the criteria in subsections (1) and (2) of this section is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the laws of this state.
 - (4) An "American employer", for the purposes of this section, means a person who is:
 - (a) An individual who is a resident of the United States; or
 - (b) A partnership if two-thirds or more of the partners are residents of the United States; or
 - (c) A trust, if all of the trustees are residents of the United States; or
 - (d) A corporation organized under the laws of the United States or of any state. [1977 ex.s. c 292 § 1; 1971 c 3 § 7.]

Effective dates—1977 ex.s. c 292: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That sections 6, 12, 14, 15, 16, and 18 of this 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 292 § 28.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.120 Employment—Localized service. Service shall be deemed to be localized within a state, if

- (1) the service is performed entirely within the state; or
- (2) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions. [1945 c 35 § 14; Rem. Supp. 1945 § 9998-153. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.125 Employment—Foreign degree-granting institutions—Employee services localized in country of domicile. The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 50.04.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in RCW 28B.90.010 in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile. [1993 c 181 § 8.]

50.04.140 Employment—Exception tests. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business

(2004 Ed.)

for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting. [1991 c 246 § 6; 1945 c 35 § 15; Rem. Supp. 1945 § 9998-154. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.145 Employment—Services performed for contractor, when excluded. The term "employment" shall not include services rendered by any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW when:

(1) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business;

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(5) A contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW does not supervise or control the means by which the result is accomplished or the manner in which the work is performed. [1983 1st ex.s. c 23 § 25; 1982 1st ex.s. c 18 § 13.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.148 Employment—Services performed by musician or entertainer. (1) The term "employment" shall not include services performed by a musician or entertainer under a written contract with a purchaser of the services for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. The contract shall designate the leader of the music or entertainment group. A music or entertainment business or a leader of a music or entertainment group shall be considered an employer and not a purchaser of music or entertainment services.

(2) Any musician or entertainer who performs for a music or entertainment business or as a member of a music or entertainment group is deemed an employee of the business or group and the business or the leader of the group shall be required to register as an employer with the department.

(3) Purchasers of services under subsection (1) of this section shall not be subject to RCW 50.24.130 relating to a principal's liability for unpaid contributions if the services are purchased from a business or group registered as an employer with the department.

(4) The term "music or entertainment business" or "group" as used in this section means an employer whose principal business activity is music or entertainment. The term does not include those entities who provide music or entertainment for members or patrons incidental to their principal business activity, and does not include an individual employing musicians or entertainers on a casual basis. [1985 c 47 § 1.]

Effective date—1985 c 47: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1985." [1985 c 47 § 2.]

50.04.150 Employment—Agricultural labor. Except as otherwise provided in RCW 50.04.155, the term "employment" shall not include service performed in agricultural labor by individuals who are enrolled as students and regularly attending classes, or are between two successive academic years or terms, at an elementary school, a secondary school, or an institution of higher education as defined in RCW 50.44.037 and in the case of corporate farms not covered under RCW 50.04.155, the provisions regarding family employment in RCW 50.04.180 shall apply.

Agricultural labor is defined as services performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applica-

ble with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. [1989 c 380 § 78; 1977 ex.s. c 292 § 2; 1957 c 264 § 1; 1947 c 215 § 3; 1945 c 35 § 16; Rem. Supp. 1945 § 9998-155. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—1989 c 380 §§ 78-81: "Sections 78 through 81 of this act shall take effect on January 1, 1990." [1989 c 380 § 91.]

Conflict with federal requirements—1989 c 380: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1989 c 380 § 89.]

Severability—1989 c 380: See RCW 15.58.942.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.155 Service performed in agricultural labor for farm operator or crew leader. (1) Service performed in agricultural labor on and after January 1, 1978, for a farm operator or crew leader will be deemed services in employment if the farm operator or crew leader:

(a) Paid twenty thousand dollars or more as remuneration to individuals employed in agricultural labor during any calendar quarter in the current or preceding calendar year; or

(b) Employed ten or more individuals in agricultural labor for some portion of the day in each of twenty different calendar weeks in either the current or preceding calendar year regardless of whether they were employed at the same moment of time or whether or not the weeks were consecutive.

(2) A farm operator is the owner or tenant of the farmlands who stands to gain or lose economically from the operations of the farm. Employment will be considered employment by the farm operator unless it is established to the satisfaction of the commissioner that the services were performed in the employ of a crew leader. The risk of nonpersuasion is upon the farm operator. The operator will nonetheless be liable for contributions under RCW 50.24.130 even though services performed on the operator's farmlands would not be sufficient to bring the services under the term employment if services performed on the operator's land in the employ of a crew leader would be covered and the crew leader has failed to pay contributions on the services. For the purposes of the preceding sentence and RCW 50.24.130, all moneys paid or payable to the crew leader by the farm operator shall be deemed paid for services unless there is a written contract clearly specifying the amounts of money to be attributed to items other than services of the crew leader or the crew leader's employees.

(3) For the purposes of this section, a crew leader is a person who furnishes individuals to perform services in agri-

cultural labor for the benefit of any other person, who pays for the services performed in agricultural labor (either on his or her own behalf or on behalf of the other person), and who has not made a written agreement making himself or herself an employee of the other person: PROVIDED, That no person shall be deemed a crew leader unless he or she is established independently of the person for whom the services are performed and either has a valid certificate of registration under the farm labor contractor registration act of 1963 or substantially all the members of his or her crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment which is provided by the crew leader. [1977 ex.s. c 292 § 3.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.160 Employment—Domestic service. Services performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority shall not be considered services in employment unless the services are performed after December 31, 1977, for a person who paid remuneration of one thousand dollars or more to individuals employed in this domestic service in any calendar quarter in the current or the preceding calendar year. The terms local college club and local chapter of a college fraternity or sorority shall not be deemed to include alumni clubs or chapters. [1977 ex.s. c 292 § 4; 1947 c 215 § 4; 1945 c 35 § 17; Rem. Supp. 1947 § 9998-156. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.165 Employment—Corporate officers—Election of coverage. Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section. [1993 c 290 § 2; 1993 c 58 § 1; 1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Conflict with federal requirements—1993 c 58: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 58 § 4.]

Severability—1993 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 58 § 5.]

Effective date—1993 c 58: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 6,

(2004 Ed.)

1993." [1993 c 58 § 6.] 1993 c 58 was signed by the governor on April 19, 1993.

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.170 Employment—Maritime service. The term "employment" shall include an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall not include services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch at a port of the United States.

"American vessel", means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [1949 c 214 § 3; 1947 c 215 § 5; 1945 c 35 § 18; Rem. Supp. 1949 § 9998-157. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.180 Family employment. The term "employment" shall not include service performed by an individual in the employ of his or her spouse, nor shall it include service performed by an unmarried individual under the age of eighteen years in the employ of his or her parent or step-parent. [1973 c 73 § 2; 1951 c 265 § 6; 1945 c 35 § 19; Rem. Supp. 1945 § 9998-158. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.205 Services performed by aliens. Except as provided in RCW 50.04.206, services performed by aliens legally or illegally admitted to the United States shall be considered services in employment subject to the payment of

contributions to the extent that services by citizens are covered. [1990 c 245 § 2; 1977 ex.s. c 292 § 5.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.206 Employment—Nonresident alien. The term "employment" shall not include service that is performed by a nonresident alien for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (H)(ii), (H)(iii), or (J) of section 101(a)(15) of the federal immigration and naturalization act, as amended, and that is performed to carry out the purpose specified in the applicable subparagraph of the federal immigration and naturalization act. [2003 2nd sp.s. c 4 § 27; 1990 c 245 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

50.04.210 Employment—Foreign governmental service. The term "employment" shall not include service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions, or the United States; except that if the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by congress, and from and after the date when such permission becomes effective all the provisions of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: PROVIDED, That if this state should not be certified by the social security board under section 903 of the social security act, as amended, for any year, then the payment required of such instrumentalities with respect to such year shall be deemed to be erroneously collected and shall be refunded by the commissioner from the fund in accordance with the provisions of this title relating to adjustments and refunds of contributions, interest, or penalties which have been paid. [1983 1st ex.s. c 23 § 5; 1945 c 35 § 22; Rem. Supp. 1945 § 9998-161. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.220 Employment—Service covered by federal act. The term "employment" shall not include service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: PROVIDED, That the commissioner is hereby authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in this title for publication of general rules, to provide reciprocal treatment to individuals who have, after

acquiring potential rights to benefits under this title, acquired right to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this title. [1945 c 35 § 23; Rem. Supp. 1945 § 9998-162. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.223 Employment—Massage practitioner. The term "employment" does not include services performed by a massage practitioner licensed under chapter 18.108 RCW in a massage business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed.

This exemption does not include services performed by a massage practitioner for an employer under chapter 50.44 RCW. [1994 c 3 § 2; 1993 c 167 § 1.]

Conflict with federal requirements—Severability—Effective dates—1994 c 3: See notes following RCW 50.04.020.

Effective date—1993 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1993." [1993 c 167 § 2.]

50.04.225 Employment—Barber and cosmetology services. The term "employment" does not include services performed in a barber shop or cosmetology shop by persons licensed under chapter 18.16 RCW if the person is a booth renter as defined in *RCW 18.16.020. [1991 c 324 § 17; 1985 c 7 § 117; 1982 1st ex.s. c 18 § 20.]

***Reviser's note:** RCW 18.16.020 was amended by 2002 c 111 § 2, deleting the definition of "booth renter."

Severability—1991 c 324: See RCW 18.16.910.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.230 Employment—Services of insurance agent, broker, or solicitor, real estate broker or real estate salesman, and investment company agent or solicitor. The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesman to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940." [1991 c 246 § 7; 1947 c 5 § 24; 1945 c 35 § 24; Rem. Supp. 1947 § 9998-162a.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.232 Employment—Travel services. The term "employment" shall not include service performed by an outside agent who sells or arranges for travel services that are provided to a travel agent as defined and registered under RCW 19.138.021, to the extent the outside agent is compensated by commission. [1995 c 242 § 1.]

Conflict with federal requirements—1995 c 242: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 242 § 2.]

50.04.235 Employment—Outside salesman paid by commission. The term "employment" shall not include services as an outside salesman of merchandise paid solely by way of commission; and such services must have been performed outside of all the places of business of the enterprises for which such services are performed only. [1957 c 181 § 1.]

50.04.240 Employment—Newsboy's service. The term "employment" shall not include service as a newsboy selling or distributing newspapers on the street or from house to house. [1945 c 35 § 25; Rem. Supp. 1945 § 9998-163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary services agency, employee leasing agency, services referral agency, or other entity shall be deemed to be employment for the temporary services agency, employee leasing agency, services referral agency, or other entity when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) For the purposes of this section:

(a) "Temporary services agency" means an individual or entity that is engaged in the business of furnishing individuals to perform services on a part-time or temporary basis for a third party.

(b) "Employee leasing agency" means an individual or entity that for a fee places the employees of a client onto its payroll and leases such employees back to the client.

(c) "Services referral agency" means an individual or entity that is engaged in the business of offering the services of an individual to perform specific tasks for a third party. [1995 c 120 § 1.]

Conflict with federal requirements—1995 c 120: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 120 § 2.]

50.04.255 Employment—Appraisal practitioner services. The term "employment" does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW in an appraisal business if the use of the business facilities is contingent upon compensation to

(2004 Ed.)

the owner of the business facilities and the person receives no compensation from the owner for the services performed. This exemption does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW for an employer under chapter 50.44 RCW. [1996 c 182 § 14.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

50.04.265 Employment—Indian tribes. The term "employment" includes services performed in the employ of an Indian tribe as provided in RCW 50.50.010. [2001 1st sp.s. c 11 § 2.]

Conflict with federal requirements—Severability—Effective date—Retroactive application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

50.04.270 Employment—Casual labor. The term "employment" shall not include casual labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer). Temporary labor in the usual course of an employer's trade or business or domestic services as defined in RCW 50.04.160 shall not be deemed to be casual labor. [1977 ex.s. c 292 § 7; 1945 c 35 § 28; Rem. Supp. 1945 § 9998-166. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.280 Employment—"Pay period" determination. If the services performed during one-half or more of any pay period by an individual for an employing unit constitute employment, all of the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for an employing unit do not constitute employment, then none of the services of such individual on behalf of such employing unit for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to an individual by the employing unit. [1945 c 35 § 29; Rem. Supp. 1945 § 9998-167. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.290 Employment office. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state as a part of a state controlled system of public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices. All claims for unemployment compensation benefits, registrations for employment, and all job or placement referrals received or made by any of the employment offices as above defined and pursuant to regulation of the commissioner subsequent to December 31, 1941, are hereby declared in all respects to be valid. The commissioner is authorized to make such investigation, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this title as he deems necessary or appropriate to facilitate the admin-

istration of any state or federal unemployment compensation or public employment service law and in like manner to accept and utilize information, services and facilities made available to the state by the agency charged with the administration of any such unemployment compensation or public employment service law. Any such action taken by the commissioner subsequent to December 31, 1941, is hereby declared to be in all respects valid. [1945 c 35 § 30; Rem. Supp. 1945 § 9998-168. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.293 Misconduct. With respect to claims that have an effective date before January 4, 2004, "misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business. [2003 2nd sp.s. c 4 § 5; 1993 c 483 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates—Applicability—1993 c 483: "(1) Sections 1 and 8 through 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and shall be effective as to separations occurring after July 3, 1993.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to weeks claimed after July 3, 1993.

(3) Section 12 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993], and is effective as to new claims filed after July 3, 1993.

(4) Section 19 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to requests for relief of charges received after July 3, 1993.

(5) Sections 15, 17, and 18 of this act shall be effective as to new extended benefit claims filed after October 2, 1993.

(6) Sections 13 and 14 of this act shall take effect January 1, 1994.

(7) Sections 3, 4, and 5 of this act shall take effect January 2, 1994.

(8) Sections 20 and 21 of this act shall take effect for tax year 1994.

(9) Section 16 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 483 § 23.]

Conflict with federal requirements—1993 c 483: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 483 § 24.]

Severability—1993 c 483: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 483 § 25.]

50.04.294 Misconduct—Gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; or

(c) Good faith errors in judgment or discretion.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee. [2003 2nd sp.s. c 4 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.295 Payments in lieu of contributions. "Payments in lieu of contributions" means money payments due to the state unemployment compensation fund as provided in RCW 50.44.060. [1971 c 3 § 2.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.300 State. "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto

Rico. [1977 ex.s. c 292 § 8; 1971 c 3 § 10; 1945 c 35 § 31; Rem. Supp. 1945 § 9998-169. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.310 Unemployed individual—Individual deemed not "unemployed." (1) An individual shall be deemed to be "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-third times the individual's weekly benefit amount plus five dollars. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(2) An individual shall be deemed not to be "unemployed" during any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer. [1984 c 134 § 1; 1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1939 c 162 § 19.]

Application—1973 2nd ex.s. c 7: "This act shall apply to weeks of unemployment commencing on or after January 6, 1974." [1973 2nd ex.s. c 7 § 4.]

50.04.320 Wages, remuneration. (1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: PROVIDED, That at the request of a claimant, wages

(2004 Ed.)

may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050. [1998 c 162 § 1; 1995 c 296 § 1; 1986 c 21 § 1; 1984 c 134 § 2; 1983 1st ex.s. c 23 § 6; 1983 c 67 § 1; 1970 ex.s. c 2 § 3; 1953 ex.s. c 8 § 2; 1951 c 265 § 3; 1949 c 214 § 4; 1947 c 215 § 6; 1945 c 35 § 33; Rem. Supp. 1949 § 9998-171. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—1998 c 162: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1998 c 162 § 2.]

Effective date—1998 c 162: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on the Sunday following the day that the governor signs this act [March 29, 1998] and is effective for initial claims filed on or after that Sunday." [1998 c 162 § 3.]

Severability—1995 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 296 § 5.]

Conflict with federal requirements—1995 c 296: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 296 § 6.]

Effective date—1995 c 296: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 296 § 7.]

Conflict with federal requirements—1986 c 21: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 21 § 2.]

Severability—1986 c 21: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 21 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits. (1) The amount of benefits payable to an individual for any week which begins after October 3, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week. However:

(a) The requirements of this subsection shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer; and

(ii) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment;

(b) The amount of any such a reduction shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic

payment, in accordance with regulations prescribed by the commissioner; and

(c) No deduction shall be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

(2) In the event that a retroactive pension or retirement payment covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension payment been considered as provided in this section shall be recoverable under RCW 50.20.190.

(3) A lump sum payment accumulated in a plan described in this section paid to an individual eligible for such payment shall be prorated over the life expectancy of the individual computed in accordance with the commissioner's regulation.

(4) The resulting weekly benefit amount payable after reduction under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(5) Any ambiguity in subsection (1) of this section should be construed in a manner consistent with 26 U.S.C. Sec. 3304 (a)(15) as last amended by P.L. 96-364. [1993 c 483 § 2; 1983 1st ex.s. c 23 § 7; 1981 c 35 § 1; 1980 c 74 § 1; 1973 2nd ex.s. c 7 § 2; 1973 1st ex.s. c 167 § 1; 1970 ex.s. c 2 § 19.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—1980 c 74: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 74 § 6.]

Effective dates—1980 c 74 §§ 1, 2, and 3: "Sections 1 and 2 of this amendatory act are necessary for the immediate preservation of the public peace, health, and safety, and the support of the state government and its existing public institutions, and shall take effect with weeks of unemployment beginning after March 31, 1980. Section 3 of this amendatory act shall take effect with benefit years beginning after June 30, 1980." [1980 c 74 § 7.]

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.330 Wages, remuneration—Retirement and disability payments excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability. After December 31, 1950, the term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities,

or into a fund to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical or hospitalization expenses in connection with sickness or accident disability or (d) death;

(2) the amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(3) the amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

(4) the amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (a) from or to a trust exempt from tax under section 165(a) of the federal internal revenue code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the federal internal revenue code; or

(5) the amount of any payment (other than vacation or sick pay) made to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made. [1951 c 265 § 4; 1949 c 214 § 5; 1945 c 35 § 34; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.335 Wages, remuneration—Stock transfers excepted. After December 31, 2003, for the purpose of the payment of contributions, the term "wages" does not include an employee's income attributable to the transfer of shares of stock to the employee pursuant to his or her exercise of a stock option granted for any reason connected with his or her employment. [2003 2nd sp.s. c 4 § 2.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.340 Wages, remuneration—Death benefits excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: PROVIDED, HOWEVER, That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. (1) For computations made before January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" from information for the specified preceding calendar years including corrections thereof reported within three months after the close of the final year of the specified years by all employers as defined in RCW 50.04.080.

(a) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers for the preceding calendar year by the average number of workers reported for all months of the preceding calendar year and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(b) The "average weekly wage" is the quotient derived by dividing the "average annual wage" obtained under (a) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(c) The "average annual wage for contributions purposes" is the quotient derived by dividing by three the total remuneration reported by all employers subject to contributions for the preceding three consecutive calendar years and dividing this amount by the average number of workers reported for all months of these three years by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(2) For computations made on or after January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage," an "average weekly wage," and an "average annual wage for contributions purposes" from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080.

(a) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(b) The "average weekly wage" is the quotient derived by dividing the "average annual wage" obtained under (a) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(c) The "average annual wage for contributions purposes" is the quotient derived by dividing the total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 15; 2000 c 2 § 1; 1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 c 73 § 3; 1970 ex.s. c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—2000 c 2: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 2 s 17.]

Severability—2000 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 2 § 18.]

Effective date—2000 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2000]." [2000 c 2 § 19.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: "All sections of this 1975 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the first Sunday following signature by the governor [June 29, 1975]." [1975 1st ex.s. c 228 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06 RCW

TEMPORARY TOTAL DISABILITY

Sections

50.06.010	Purpose.
50.06.020	Allowable beneficiaries.
50.06.030	Application for initial determination of disability—Special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims—Effect.
50.06.900	Application of chapter—Recipients of industrial insurance or crime victims compensation.
50.06.910	Partial invalidity of chapter.

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to persons who have suffered a temporary total disability and is a recognition by this legislature of the economic hardship confronting those persons who have not been promptly reemployed after a prolonged period of temporary total disability. [1993 c 483 § 3; 1984 c 65 § 1; 1975 1st ex.s. c 228 § 7.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. The benefits of this chapter shall be allowed only to:

(1) Individuals who have suffered a temporary total disability and have received compensation under the industrial insurance or crime victims compensation laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability; or

(2) Individuals who are reentering the work force after an absence of not less than thirteen consecutive calendar weeks resulting from temporary total physical disability because of a nonwork-related injury or illness: PROVIDED, That individuals authorized to receive benefits under this subsection are required to meet other eligibility requirements under Title 50 RCW. [1993 c 483 § 4; 1984 c 65 § 2; 1975 1st ex.s. c 228 § 8.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability—Special base year—Special individual benefit year. (1) In the case of individuals eligible under RCW 50.06.020(1), an application for initial determination made pursuant to this chapter, to be considered timely, must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation

shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability.

(2) In the case of individuals eligible under RCW 50.06.020(2), an application for initial determination must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total physical disability commenced. This filing requirement is satisfied by filing a signed statement from the attending physician stating the date that the disability commenced and stating that the individual was unable to reenter the work force during the time of the disability. The department may examine any medical information related to the disability. If the claim is appealed, a base year employer may examine the medical information related to the disability and require, at the employer's expense, that the individual obtain the opinion of a second health care provider selected by the employer concerning any information related to the disability.

(3) The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

(4) For the purpose of this chapter, a special base year is established for an individual consisting of either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance or crime victims compensation laws, or the week in which the individual reentered the work force after an absence under subsection (2) of this section, as applicable, except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: PROVIDED HOWEVER, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the eligibility requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: PROVIDED FURTHER, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year.

(5) For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar

quarters as the base year, the department shall use the last four completed calendar quarters as the base year. [2002 c 73 § 1; 1993 c 483 § 5; 1987 c 278 § 3; 1984 c 65 § 3; 1975 1st ex.s. c 228 § 9.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims—Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement or amount of benefits in any succeeding benefit year. [1975 1st ex.s. c 228 § 11.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Application of chapter—Recipients of industrial insurance or crime victims compensation. (1) This chapter shall be available to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after June 29, 1975.

(2) This chapter shall also be available to individuals who suffer a temporary total disability compensable under crime victims compensation laws, after June 7, 1984. [1984 c 65 § 4; 1975 1st ex.s. c 228 § 12.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08 RCW

ESTABLISHMENT OF DEPARTMENT

Sections

- 50.08.010 Employment security department established.
50.08.020 Divisions established.
50.08.030 Administration of family services and programs.

Displaced homemaker act, departmental participation: RCW 28B.04.080.

*Labor market information and economic analysis—Duties and authority:
Chapter 50.38 RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees:
RCW 19.16.500.*

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency. [1973 1st ex.s. c 158 § 1; 1947 c 215 § 9; 1945 c 35 § 39; Rem. Supp. 1947 § 9998-177. Prior: 1943 c 127 § 9; 1939 c 214 § 7; 1937 c 162 § 9.]

Effective date—1973 1st ex.s. c 158: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 158 § 21.]

50.08.030 Administration of family services and programs. The commissioner shall administer family services and programs to promote the state's policy as provided in RCW 74.14A.025. [1992 c 198 § 10.]

Severability—Effective date—1992 c 198: See RCW 70.190.910 and 70.190.920.

Chapter 50.12 RCW

ADMINISTRATION

Sections

50.12.010	Commissioner's duties and powers.
50.12.020	Personnel appointed by commissioner.
50.12.031	Personnel board—Travel expenses of board.
50.12.040	Rule-making authority.
50.12.042	Rules—2003 2nd sp.s. c 4.
50.12.045	Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.
50.12.050	Reciprocal benefit arrangements.
50.12.060	Reciprocal coverage arrangements.
50.12.070	Employing unit records and reports—Unified business identifier account number records.
50.12.080	Arbitrary reports.
50.12.090	Interstate use of employing unit records.
50.12.100	Compulsory production of records and information.
50.12.120	Protection against self-incrimination.
50.12.130	Oaths and witnesses.
50.12.140	Destruction of office records.
50.12.150	Representation by attorney general.
50.12.160	Publication of title, rules and regulations, etc.
50.12.170	Services and fees of sheriffs.
50.12.180	State-federal cooperation.
50.12.190	Employment stabilization.
50.12.200	State advisory council—Committees and councils.
50.12.210	Employment services for handicapped—Report to legislative committees.
50.12.220	Penalties for late reports or contributions—Assessment—Appeal.
50.12.230	Job skills training program—Department's duties.
50.12.235	Washington conservation corps—Department's duties.
50.12.240	On-the-job training—Employer qualifications established by rule.
50.12.245	Cooperation with work force training and education coordinating board.
50.12.250	Information clearinghouse to assist in employment of persons of disability.
50.12.252	Information clearinghouse—Consultation on establishment.
50.12.280	Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation.

Administration of OASI plans for members of teachers' retirement and state employees' retirement systems: Chapters 41.33, 41.41 RCW.

Merit system: Chapter 41.06 RCW.

50.12.010 Commissioner's duties and powers. The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication and in the manner, not inconsistent with the provisions of this title, which the commissioner shall prescribe. The commissioner, in accordance with the provisions of this title, shall determine the organization and methods of procedure of the divisions referred to in this title, and shall have an official seal which shall be judicially noticed. The commissioner shall submit to the governor a report covering the administration and operation of this title during the preceding fiscal year, July 1 through June 30, and shall make such recommendations for amendments to this title as he deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a

reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and legislature and make recommendations with respect thereto. [1977 c 75 § 75; 1955 c 286 § 1; 1949 c 214 § 7; 1945 c 35 § 40; Rem. Supp. 1949 § 9998-178. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 12 § 2.]

50.12.020 Personnel appointed by commissioner.

The commissioner is authorized to appoint and fix the compensation of such officers, accountants, experts, and other personnel as may be necessary to carry out the provisions of this title: PROVIDED, That such appointment shall be made on a nonpartisan merit basis in accordance with the provisions of this title relating to the selection of personnel. The commissioner may delegate to any person appointed such power and authority as the commissioner deems reasonable and proper for the effective administration of this title, including the right to decide matters placed in the commissioner's discretion under this title, and may in his or her discretion bond any person handling moneys or signing checks hereunder. [1985 c 96 § 1; 1973 1st ex.s. c 158 § 2; 1945 c 35 § 41; Rem. Supp. 1945 § 9998-179. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.031 Personnel board—Travel expenses of board. Members of the board shall be allowed travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while traveling to and from and attending regularly called meetings. [1975-'76 2nd ex.s. c 34 § 148; 1959 c 127 § 2.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

50.12.040 Rule-making authority. Permanent and emergency rules shall be adopted, amended, or repealed by the commissioner in accordance with the provisions of Title 34 RCW and the rules adopted pursuant thereto: PROVIDED, That the commissioner may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. [1995 c 403 § 109; 1973 1st ex.s. c 158 § 3; 1945 c 35 § 43; Rem. Supp. 1945 § 9998-181. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.042 Rules—2003 2nd sp.s. c 4. The commissioner of the employment security department may adopt such rules as are necessary to implement chapter 4, Laws of 2003 2nd sp. sess. [2003 2nd sp.s. c 4 § 34.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.12.045 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications. The commissioner may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 5.]

Intent—1997 c 51: See note following RCW 19.02.300.

50.12.050 Reciprocal benefit arrangements. As used in this section the terms "other state" and "another state" shall be deemed to include any state or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign government and, where applicable, shall also be deemed to include the federal government or provisions of a law of the federal government, as the case may be.

As used in this section the term "claim" shall be deemed to include whichever of the following terms is applicable, to wit: "Application for initial determination", "claim for waiting period credit", or "claim for benefits".

The commissioner shall enter into an agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this title or under the provisions of the law of the designated paying state (including another state) or under such a combination of the provisions of both laws as shall be determined by the commissioner as being fair and reasonable to all affected interests, and whereby the wages of such individual, if earned in two or more states (including another state) may be combined, and further, whereby this state or another state shall reimburse the paying state in an amount which shall bear the same ratio to the amount of benefits already paid as the amount of wage credits transferred by this state or another state, and used in the determination, bear to the total wage credits used in computing the claimant's maximum amount of benefits potentially payable.

(2004 Ed.)

Whenever any claim is filed by an individual involving the combination of wages or a reciprocal arrangement for the payment of benefits, which is governed by the provisions of this section, the employment security department of this state, when not designated as the paying state, shall promptly make a report to the other state making the determination, showing wages earned in employment in this state.

The commissioner is hereby authorized to make to another state and to receive from another state reimbursements from or to the unemployment compensation fund in accordance with arrangements made pursuant to the provisions of this section. [1977 ex.s. c 292 § 9; 1971 c 3 § 11; 1959 c 266 § 1; 1949 c 214 § 8; 1945 c 35 § 44; Rem. Supp. 1949 § 9998-182. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.12.060 Reciprocal coverage arrangements. The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (1) in which any part of such individual's service is performed, or (2) in which such individual has his residence, or (3) in which the employing unit maintains a place of business: PROVIDED, That there is in effect, as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state. [1945 c 35 § 45; Rem. Supp. 1945 § 9998-183. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.070 Employing unit records and reports—Unified business identifier account number records. (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the commissioner, but not to exceed two hundred fifty dollars, to be collected as provided in RCW 50.24.120.

(2)(a) Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe,

setting forth the remuneration paid for employment to workers in its employ, the names of all such workers, and until April 1, 1978, the number of weeks for which the worker earned the "qualifying weekly wage", and beginning July 1, 1977, the hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. [1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.12.080 Arbitrary reports. If any employing unit fails to make or file any report or return required by this title, or any regulation made pursuant hereto, the commissioner may, upon the basis of such knowledge as may be available to him, arbitrarily make a report on behalf of such employing unit and the report so made shall be deemed to be prima facie correct. In any action or proceedings brought for the recovery of contributions, interest, or penalties due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department, or a certificate that a return has been filed by or for an employer or estimated by reason of lack of a return, shall be prima facie evidence of the amount of such payroll for the period stated in the certificate. [1983 1st ex.s. c 23 § 9; 1951 c 215 § 2; 1945 c 35 § 47; Rem. Supp. 1945 § 9998-185. Prior: 1943 c 127 § 8.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.12.090 Interstate use of employing unit records. The records of an employer maintained in this state pertaining to employment of persons in another state shall be open to representatives of the commissioner to permit cooperation with other state unemployment compensation agencies in ascertaining information necessary to administer the unemployment compensation acts of such other states. [1945 c 35 § 48; Rem. Supp. 1945 § 9998-186.]

50.12.100 Compulsory production of records and information. In case of contumacy or refusal to obey subpoenas issued to any person, any court of the state within the

jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before such authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation, or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. [1945 c 35 § 49; Rem. Supp. 1945 § 9998-187. Prior: 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.120 Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the commissioner or any appeal tribunal in obedience to the subpoena of such representative of the commissioner or such appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1945 c 35 § 51; Rem. Supp. 1945 § 9998-189. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.130 Oaths and witnesses. In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed to be necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section. [1945 c 35 § 52; Rem. Supp. 1945 § 9998-190. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.140 Destruction of office records. The commissioner may destroy any form, claim, ledger, check, letter, or other record of the employment security department at the expiration of three years after such record was originated by or filed with the employment security department, except that warrants and claims, claim determination, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated by or filed with the employment security department, and except that this section shall not apply to records pertaining to grants, accounts or expenditures for administration, records of the unemployment compensation fund and the unemployment compensation administration fund. [1947 c 215 § 11; 1945 c 35 § 53; Rem. Supp. 1947 § 99998-191.]

Preservation and destruction of public records: Chapter 40.14 RCW.

50.12.150 Representation by attorney general. The attorney general shall be the general counsel of each and all divisions and departments under this title and it shall be his duty to institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of each, every, and all of the provisions of this title, and it shall be the duty of the attorney general to assign such assistants and attorneys as may be necessary to the exclusive duty of assisting each, every, and all divisions and departments created under this title in the enforcement of this title. The salaries of such assistants shall be paid out of the unemployment compensation administration fund, together with their expenses fixed by the attorney general and allowed by the treasurer of the unemployment compensation administration fund when approved upon vouchers by the attorney general. [1945 c 35 § 54; Rem. Supp. 1945 § 9998-192. Prior: 1937 c 162 § 17.]

Attorney general: Chapter 43.10 RCW.

50.12.160 Publication of title, rules and regulations, etc. The commissioner may cause to be printed for distribution to the public the text of this title, the regulations and general rules, and other material which he deems relevant and suitable. [1977 c 75 § 76; 1945 c 35 § 55; Rem. Supp. 1945 § 9998-193.]

50.12.170 Services and fees of sheriffs. The sheriff of any county, upon request of the commissioner or his duly authorized representative, or upon request of the attorney general, shall, for and on behalf of the commissioner, perform the functions of service, distraint, seizure, and sale, authority for which is granted to the commissioner or his duly authorized representative. No bond shall be required by the sheriff of any county for services rendered for the commissioner, his duly authorized representative, or the attorney general. The sheriff shall be allowed such fees as may be prescribed for like or similar official services. [1945 c 35 § 56; Rem. Supp. 1945 § 9998-194.]

County sheriff: Chapter 36.28 RCW.

50.12.180 State-federal cooperation. The commissioner, through the Washington state employment service division, shall establish and maintain free public employment offices in such places as may be necessary for the proper administration of this title and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49(c), as amended).

In the administration of this title the commissioner shall cooperate to the fullest extent consistent with the provisions of this title, with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the

said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act and there shall be observance of and compliance with the requirements thereof. The commissioner may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities, and make available to said board the state's records relating to the administration of this title, and furnish such copies thereof, at the expense of the board, as it may deem necessary for its purposes.

The commissioner shall comply with such provisions as the social security board, created by the social security act, approved August 14, 1935, as amended, may from time to time require, regarding reports and the correctness and verification thereof, and shall comply with the regulations of the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting the administration of this title. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

The commissioner is also authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress.

Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title. [1973 1st ex.s. c 158 § 4; 1959 c 266 § 2; 1945 c 35 § 57; Rem. Supp. 1945 § 9998-195. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.190 Employment stabilization. The commissioner shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry and publish the results of investigations and research studies. [1945 c 35 § 58; Rem. Supp. 1945 § 9998-197. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.200 State advisory council—Committees and councils. The commissioner shall appoint a state advisory council composed of not more than nine men and women, of which three shall be representatives of employers, three shall be representatives of employees, and three shall be representatives of the general public. Such council shall aid the commissioner in formulating policies and discussing problems related to the administration of this title and of assuring impartiality and freedom from political influence in the solution of such problems. The council shall serve without compensation. The commissioner may also appoint committees, and industrial or other special councils, to perform appropriate services. Advisory council members shall be reimbursed for travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1982 1st ex.s. c 18 § 1; 1975-'76 2nd ex.s. c 34 § 149; 1953 ex.s. c 8 § 4; 1947 c 215 § 12; 1945 c 35 § 59; Rem. Supp. 1947 § 9998-197. Prior: 1941 c 253 § 17.]

Severability—1982 1st ex.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 18 § 22.]

Conflict with federal requirements—1982 1st ex.s. c 18: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1982 1st ex.s. c 18 § 21.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

50.12.210 Employment services for handicapped—Report to legislative committees. It is the policy of the state of Washington that persons with physical, mental, or sensory handicaps shall be given equal opportunities in employment. The legislature recognizes that handicapped persons have faced unfair discrimination in employment.

For these reasons, the state employment service division of the employment security department shall give particular and special attention service to those persons with physical, mental, or sensory handicaps which substantially limit one or more of their major life functions as defined under P.L. 93-112 and rules promulgated thereunder. Particular and special attention service shall include but not be limited to particular and special attention in counseling, referral, notification of job listings in advance of other persons, and other services of the employment service division.

Nothing in this section shall be construed so as to affect the veteran's preference or any other requirement of the United States department of labor.

The employment security department shall report to the house and senate commerce and labor committees by December 1, 1987, on its accomplishments under this section and on its future plans for implementation of this section. The department shall report to the above mentioned committees every odd-numbered year thereafter on its actions under this section.

The employment security department shall establish rules to implement this section. [1987 c 76 § 1; 1977 ex.s. c 273 § 1.]

50.12.220 Penalties for late reports or contributions—Assessment—Appeal. (1)(a) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer shall be subject to a penalty to be determined by the commissioner, but not to exceed two hundred fifty dollars or ten percent of the quarterly contributions for each such offense, whichever is less.

(b) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(c) If any part of a delinquency for which an assessment is made under this title is due to an intent to evade the successorship provisions of RCW 50.29.062, then for the calendar year in which the commissioner makes the determination under this subsection, the commissioner shall assign to the employer, and to any business found to be promoting the evasion of such provisions, the contribution rate determined for that calendar year under RCW 50.29.025, including the solvency surcharge, if any, for rate class 20 or rate class 40, as applicable, plus two percent.

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(4) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

(5) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030. [2004 c 97 § 1; 2003 2nd sp.s. c 4 § 22; 1987 c 111 § 2; 1979 ex.s. c 190 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1987 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 111 § 10.]

Severability—1987 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 111 § 11.]

Effective date—1987 c 111: "This act shall take effect July 1, 1987. Sections 2 and 8 of this act shall be effective for quarters beginning on and after July 1, 1987." [1987 c 111 § 12.]

50.12.230 Job skills training program—Department's duties. See RCW 28C.04.400 through 28C.04.420.

50.12.235 Washington conservation corps—Department's duties. See chapter 43.220 RCW.

50.12.240 On-the-job training—Employer qualifications established by rule. The commissioner may establish by rule qualifications for employers who agree to provide on-the-job training for new employees. [1985 c 299 § 2.]

50.12.245 Cooperation with work force training and education coordinating board. The commissioner shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under RCW 28C.18.060 and shall provide information and data in a format that is accessible to the board. [1991 c 238 § 80.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

50.12.250 Information clearinghouse to assist in employment of persons of disability. The employment security department shall establish an information clearinghouse for use by persons of disability and governmental and private employers. The services of the clearinghouse shall include:

(1) Provision of information on private and state services available to assist persons of disability in their training and employment needs;

(2) Provision of information on private, state, and federal incentive programs and services available to employers of persons of disability; and

(3) Publication of a comprehensive list of programs and services in subsections (1) and (2) of this section. [1987 c 369 § 2.]

Legislative finding—1987 c 369: "The legislature finds that improving the economic status of persons of disability, the state's largest social minority (2004 Ed.)

with over four hundred thousand people, will require active state involvement. Persons of disability suffer unemployment at almost twice the rate and experience poverty at more than twice the rate of the general population. Employers have experienced confusion about the variety of employment services available to them. Optimum service from, and access to, the state's training and placement programs for persons of disability requires coordination and a clear focus on the stated needs of persons of disability and their prospective employers. It is the purpose of this chapter to guarantee that representatives of the disability community, labor, and the private sector have an institutionalized means of meeting their respective needs in the training, employment, and economic participation of persons of disability." [1987 c 369 § 1.]

50.12.252 Information clearinghouse—Consultation on establishment. In establishing the information clearinghouse, the employment security department shall consult with organizations of private sector employers and persons of disability. [1987 c 369 § 3.]

Legislative finding—1987 c 369: See note following RCW 50.12.250.

50.12.280 Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation. The displaced workers account is established. All moneys from RCW 82.32.393 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to provide for compensation and retraining of displaced workers of the thermal electric generation facility and of the coal mine that supplied coal to the facility. The benefits from the account are in addition to all other compensation and retraining benefits to which the displaced workers are entitled under existing state law. The employment security department shall administer the distribution of moneys from the account. [1997 c 368 § 13.]

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Chapter 50.13 RCW

RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

Sections

50.13.010	Legislative intent and recognition.
50.13.015	Information held private and confidential—Requests for disclosure.
50.13.020	Information or records deemed private and confidential—Exceptions.
50.13.030	Rules.
50.13.040	Access of individual or employing unit to records and information.
50.13.050	Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception.
50.13.060	Access to records or information by governmental agencies.
50.13.070	Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas.
50.13.080	Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties.
50.13.090	Disclosure of records or information to contracting governmental or private organizations.
50.13.100	Disclosure of records or information where identifying details deleted or individual or employing unit consents.
50.13.900	Construction.
50.13.905	Severability—1977 ex.s. c 153.
50.13.910	Legislative designation and placement.

50.13.010 Legislative intent and recognition. This chapter is intended to reconcile the free access to public records granted by the open government act and the discovery rights of judicial and administrative systems with the historical confidentiality of certain records of the department of employment security and the individual's right of privacy as acknowledged by the open government act.

The legislature recognizes that records and information held by the department of employment security could be misused. Therefore, this chapter defines a right of privacy and confidentiality as regards individual and employing unit records maintained by the department of employment security. The legislature further recognizes that there are situations where this right of privacy and confidentiality is outweighed by other considerations. Therefore, this chapter also defines certain exceptions to the right of privacy and confidentiality. [1977 ex.s. c 153 § 1.]

50.13.015 Information held private and confidential—Requests for disclosure. (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily,

conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.17 RCW to the contrary. [1989 c 92 § 3.]

50.13.020 Information or records deemed private and confidential—Exceptions. Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may be released by the department of employment security when the release is:

(1) Required by the federal government in connection with, or as a condition of funding for, a program being administered by the department; or

(2) Requested by a county clerk for the purposes of RCW 9.94A.760.

The provisions of RCW 50.13.060 (1) (a), (b) and (c) will not apply to such release. [2004 c 121 § 5; 1981 c 35 § 2; 1977 ex.s. c 153 § 2.]

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.13.030 Rules. The commissioner of the department of employment security shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter 42.17 RCW. [1977 ex.s. c 153 § 3.]

50.13.040 Access of individual or employing unit to records and information. (1) An individual shall have access to all records and information concerning that individual held by the department of employment security, unless the information is exempt from disclosure under RCW 42.17.310.

(2) An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer.

(3) An employing unit shall have access to any records and information relating to any decision to allow or deny benefits if:

(a) The decision is based on employment or an offer of employment with the employing unit; or

(b) If the decision is based on material information provided by the employing unit.

(4) An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account. [1993 c 483 § 6; 1977 ex.s. c 153 § 4.]

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.13.050 Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decisions by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decisions are based on information obtained in a closed hearing. [1977 ex.s. c 153 § 5.]

50.13.060 Access to records or information by governmental agencies. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under RCW 42.17.310.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-

stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under RCW 42.17.310; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

Findings—2000 c 134: "The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

Conflict with federal requirements—2000 c 134: "If any part of this act is found to be in conflict with federal requirements that are a prescribed

condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 134 § 4.]

Severability—2000 c 134: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 134 § 5.]

Effective date—1997 c 409 § 605: "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Conflict with federal requirements—1996 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

Effective date—1996 c 79: "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

Effective date—1993 c 281: See note following RCW 41.06.022.

50.13.070 Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas. Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records. Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding specified above. A judicial or administrative subpoena directed to the employment security department must contain this finding. A subpoena for records or information held by the department may be directed to and served upon any employee of the department, but the department may specify by rule which employee shall produce the records or information in compliance with the subpoena. [1977 ex.s. c 153 § 7.]

50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties.

(1) The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the informa-

tion was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees.

(2) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(9).

(3) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1996 c 79 § 2; 1977 ex.s. c 153 § 8.]

Conflict with federal requirements—Effective date—1996 c 79: See notes following RCW 50.13.060.

50.13.090 Disclosure of records or information to contracting governmental or private organizations.

Where the employment security department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential which have been acquired in the performance of the department's obligations under the contracts. [1977 ex.s. c 153 § 9.]

50.13.100 Disclosure of records or information where identifying details deleted or individual or employing unit consents. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employing unit are deleted or the individual or employing unit consents to the disclosure. [1977 ex.s. c 153 § 10.]

50.13.900 Construction. Any ambiguities in this chapter shall be construed in a manner consistent with federal laws applying to the employment security department. If any provision of this chapter or the application thereof is held invalid by a final decision of any court or declared by the secretary of the department of labor of the United States to be inconsistent with federal laws upon which funding of the employment security department is contingent, the invalid or inconsistent provision shall be ineffective only to the extent necessary to insure compliance with the court decision or federal determination and the remainder of the chapter shall be given full effect. [1977 ex.s. c 153 § 11.]

50.13.905 Severability—1977 ex.s. c 153. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 153 § 13.]

50.13.910 Legislative designation and placement. Sections 1 through 11 of this act shall constitute a new chapter in Title 50 RCW and shall be designated as chapter 50.13 RCW. [1977 ex.s. c 153 § 14.]

Chapter 50.16 RCW

FUNDS

Sections

50.16.010	Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.
50.16.015	Federal interest payment fund—Establishment.
50.16.020	Administration of funds—Accounts.
50.16.030	Withdrawals from federal unemployment trust fund.
50.16.040	Management of funds upon discontinuance of federal unemployment trust fund.
50.16.050	Unemployment compensation administration fund.
50.16.060	Replacement of federal funds.
50.16.070	Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful.
50.16.080	Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d) During the 2003-2005 fiscal biennium, the cost of the job skills program and the alliance for corporate education at community and technical colleges as appropriated by the legislature.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914. Prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Reviser's note: This section was amended by 2003 1st sp.s. c 25 § 925 and by 2003 2nd sp.s. c 4 § 23, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1993 c 226 §§ 10, 12, and 14: "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

Conflict with federal requirements—1993 c 226: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

Severability—1993 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

Application—1993 c 226: "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Intent—1987 c 202: See note following RCW 2.04.190.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.16.015 Federal interest payment fund—Establishment. A separate and identifiable fund to provide for the payment of interest on advances received from this state's account in the federal unemployment trust fund shall be established and administered under the direction of the commissioner. This fund shall be known as the federal interest payment fund and shall consist of contributions paid under RCW 50.16.070. All money in this fund shall be expended solely for the payment of interest on advances received from this state's account in the federal unemployment trust fund and for no other purposes whatsoever. [2003 2nd sp.s. c 4 § 24; 1983 1st ex.s. c 13 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.22.100.

50.16.020 Administration of funds—Accounts. The commissioner shall designate a treasurer and custodian of the unemployment compensation fund and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his or her warrants upon them in accordance with such regulations as the commissioner shall prescribe. The treasurer and

(2004 Ed.)

custodian shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: PROVIDED, HOWEVER, That refunds of interest or penalties on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his or her duties as a custodian of the funds in an amount fixed by the director of the department of general administration and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such fund. [1993 c 226 § 12; 1993 c 226 § 11; 1983 1st ex.s. c 23 § 10; 1975 c 40 § 12; 1953 ex.s. c 8 § 6; 1945 c 35 § 61; Rem. Supp. 1945 § 9998-199. Prior: 1943 c 126 §§ 6, 9; 1939 c 214 § 11; 1937 c 162 § 13.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Powers and duties of director of general administration as to official bonds:
RCW 43.41.360.

50.16.030 Withdrawals from federal unemployment trust fund. (1) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during

any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [1999 c 36 § 1; 1983 1st ex.s. c 7 § 1; 1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

Conflict with federal requirements—1999 c 36: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1999 c 36 § 2.]

50.16.040 Management of funds upon discontinuance of federal unemployment trust fund. The provisions of this title, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein for this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities

therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, in accordance with the provisions of this title: PROVIDED, That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest bearing obligations of the United States of America: AND PROVIDED FURTHER, That such investment shall at all times be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner. [1945 c 35 § 63; Rem. Supp. 1945 § 9998-201. Prior: 1941 c 253 § 7.]

50.16.050 Unemployment compensation administration fund. (1) There is hereby established a fund to be known as the unemployment compensation administration fund. Except as otherwise provided in this section, all moneys which are deposited or paid into this fund are hereby made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section 302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of RCW 43.01.050 shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.

(2) Notwithstanding any provision of this section:

(a) All money requisitioned and deposited in this fund pursuant to RCW 50.16.030(6) shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in RCW 50.16.030 (4), (5) and (6).

(b) All money deposited in this fund pursuant to RCW 50.38.065 shall be used only after appropriation and only for

(2004 Ed.)

the purposes of RCW 50.38.060. [1993 c 62 § 8; 1959 c 170 § 3; 1947 c 215 § 13; 1945 c 35 § 64; Rem. Supp. 1947 § 9998-202. Prior: 1941 c 253 § 7; 1939 c 214 § 11; 1937 c 162 § 13.]

Conflict with federal requirements—Effective date—1993 c 62: See RCW 50.38.901 and 50.38.902.

50.16.060 Replacement of federal funds. The state of Washington hereby pledges that it will replace within a reasonable time any moneys paid to this state under Title III of the social security act, and the Wagner-Peyser act, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the Washington employment security act. [1959 c 170 § 4; 1945 c 35 § 67; Rem. Supp. 1945 § 9998-205.]

50.16.070 Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful. The federal interest payment fund shall consist of contributions payable by each employer (except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, employers who are required to make payments in lieu of contributions, and employers paying contributions under RCW 50.44.035) for any calendar quarter which begins on or after January 1, 1984, and for which the commissioner determines that the department will have an outstanding balance of accruing federal interest at the end of the calendar quarter. The amount of wages subject to tax shall be determined according to RCW 50.24.010. The tax rate applicable to wages paid during the calendar quarter shall be determined by the commissioner and shall not exceed fifteen one-hundredths of one percent. In determining whether to require contributions as authorized by this section, the commissioner shall consider the current balance in the federal interest payment fund and the projected amount of interest which will be due and payable as of the following September 30. Except as appropriated for the fiscal biennium ending June 30, 1991, any excess moneys in the federal interest payment fund shall be retained in the fund for future interest payments.

Contributions under this section shall become due and be paid by each employer in accordance with such rules as the commissioner may prescribe and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [1989 1st ex.s. c 19 § 811; 1988 c 289 § 710; 1983 1st ex.s. c 13 § 7.]

Severability—1989 1st ex.s. c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 19 § 817.]

Effective date—1989 1st ex.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 19 § 818.]

Severability—1988 c 289: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 289 § 803.]

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

50.16.080 Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees. The cost of administering the federal targeted jobs tax credit program shall be fully borne by the employers requesting the credits. The commissioner shall establish the amount of the processing fee and procedures for collecting the fee. The commissioner shall establish the processing fee at a sufficient level to defray the costs of administering the federal targeted jobs tax credit program. The fee shall be established by the commissioner by rule. However, if federal funding is provided to finance such services, the commissioner shall revise or eliminate this fee based on the amount of federal funding received. Fees received for processing shall be deposited in a special account in the unemployment compensation administration fund. [1988 c 84 § 2.]

Legislative finding—1988 c 84: "The legislature finds that:

(1) The employment security department through the targeted jobs tax credit program has the responsibility to issue federal tax credit certifications to Washington state employers. The tax credit certification allows the employer to claim a credit against federal income tax for wages paid during the first year to employees who qualify for the program.

(2) To the extent that funding is available, the department, through the federal targeted jobs tax credit program, provides service to employers in the form of technical assistance and training, program marketing, monitoring, and maintenance of records and processing of documents that may result in a certification which allows employers to claim a federal tax credit.

(3) The United States Congress through the Tax Reform Act of 1986 reauthorized the targeted jobs tax credit but did not include funds to cover the costs of processing employer requests for federal tax credit certifications.

(4) The state has a vital interest in the economic benefits employers realize from the targeted jobs tax credit because the economic competitiveness of Washington state is enhanced as tax credit savings are reinvested in the state's economy.

(5) The departments of corrections, social and health services, and veterans affairs, and the superintendent of public instruction, along with employment security and other state service providers, utilize the targeted jobs tax credit program as an incentive for employers to hire hard-to-place clients.

(6) Economically disadvantaged youth, Vietnam-era veterans, ex-felons, and vocational rehabilitation, supplemental security income, general assistance and AFDC recipients have an especially difficult time in obtaining employment." [1988 c 84 § 1.]

Conflict with federal requirements—1988 c 84: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 84 § 3.]

Severability—1988 c 84: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 84 § 4.]

Effective date—1988 c 84: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1988." [1988 c 84 § 6.] This act was signed by the governor March 16, 1988.

Chapter 50.20 RCW

BENEFITS AND CLAIMS

Sections

50.20.010	Benefit eligibility conditions.
50.20.011	Profiling system to identify individuals likely to exhaust benefits—Confidentiality of information—Penalty.
50.20.012	Rules—1995 c 381.
50.20.020	Waiting period credit limitation.
50.20.041	Health care professionals who have contracted hepatitis C—Training.
50.20.042	Unemployed aerospace workers—Training.
50.20.043	Training provision.
50.20.044	Ineligibility for benefits for failure to attend job search workshop or training course.
50.20.050	Disqualification for leaving work voluntarily without good cause.
50.20.060	Disqualification from benefits due to misconduct.
50.20.065	Cancellation of hourly wage credits due to felony or gross misdemeanor.
50.20.066	Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct.
50.20.070	Disqualification for misrepresentation.
50.20.080	Disqualification for refusal to work.
50.20.085	Disqualification for receipt of industrial insurance disability benefits.
50.20.090	Strike or lockout disqualification—When inapplicable.
50.20.095	Disqualification for attending school or institution of higher education.
50.20.098	Services performed by alien.
50.20.099	Training benefits—Eligibility to work in the United States.
50.20.100	Suitable work factors.
50.20.110	Suitable work exceptions.
50.20.113	Unemployment of sport or athletic event participant during period between sport seasons.
50.20.115	Unemployment due to vacation.
50.20.117	Jury service.
50.20.118	Unemployment while in approved training.
50.20.119	Part-time workers.
50.20.120	Amount of benefits.
50.20.130	Deduction from weekly benefit amount.
50.20.140	Filing applications and claims—Definitions.
50.20.150	Notice of application or claim.
50.20.160	Redetermination.
50.20.170	Payment of benefits.
50.20.180	Denial of benefits.
50.20.190	Recovery of benefit payments.
50.20.191	Authority to compromise benefit overpayments.
50.20.192	Collection of benefit overpayments, limitation of actions.
50.20.193	Chargeoff of uncollectible benefit overpayments.
50.20.195	Assessed interest—Use.
50.20.200	Nonliability of state.
50.20.210	Notification of availability of basic health plan.
50.20.220	Federal income tax deduction and withholding—Notice—Rules.
50.20.230	Electronic labor exchange system.
50.20.240	Job search monitoring.

Environmental restoration job training: RCW 43.21J.060 and 43.21J.070.

50.20.010 Benefit eligibility conditions. (1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commis-

sioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.

(i) With respect to claims that have an effective date before January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents.

(ii) With respect to claims that have an effective date on or after January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules;

(d) He or she has been unemployed for a waiting period of one week;

(e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [2003 2nd sp.s. c 4 § 3; 1995 c 381 § 1; 1981 c 35 § 3; 1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998-206. Prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1995 c 381: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 381 § 5.]

Effective date—1995 c 381: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 381 § 6.]

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.011 Profiling system to identify individuals likely to exhaust benefits—Confidentiality of information—Penalty. (1) The commissioner shall establish and use a profiling system for new claimants for regular compensation under this title that identifies permanently separated workers who are likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment. The profiling system shall use a combination of individual characteristics and labor market information to assign each individual a unique probability of benefit exhaustion. Individuals identified as likely to exhaust benefits shall be referred to reemployment services, such as job search assistance services, to the extent such services are available at public expense.

(2) The profiling system shall include collection and review of follow-up information relating to the services received by individuals under this section and the employment outcomes for the individuals following receipt of the services. The information shall be used in making profiling identifications.

(3) In carrying out reviews of individuals receiving services, the department may contract with public or private entities and may disclose information or records necessary to permit contracting entities to assist in the operation and management of department functions. Any information or records disclosed to public or private entities shall be used solely for the purposes for which the information was disclosed and the entity shall be bound by the same rules of privacy and confidentiality as department employees. The misuse or unauthorized disclosure of information or records deemed private and confidential under chapter 50.13 RCW by any person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1995 c 381 § 2.]

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.012 Rules—1995 c 381. The commissioner may adopt rules as necessary to implement the 1995 c 381 §§ 1 and *3 amendments to RCW 50.20.010 and 50.20.043 and 50.20.011, including but not limited to definitions, eligibility standards, program review criteria and procedures, and provisions necessary to comply with applicable federal laws and regulations that are a condition to receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1995 c 381 § 4.]

***Reviser's note:** Section 3 of this act (amendment to RCW 50.20.043) was vetoed by the governor.

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.020 Waiting period credit limitation. No week shall be counted as a waiting period week,

- (1) if benefits have been paid with respect thereto, and
- (2) unless the individual was otherwise eligible for benefits with respect thereto, and

(3) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits. [1949 c 214 § 10; 1945 c 35 § 69; Rem. Supp. 1949 § 9998-207.]

50.20.041 Health care professionals who have contracted hepatitis C—Training. (1) Credentialed health care professionals listed in RCW 18.130.040 shall be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043 if they are unemployed as a result of contracting hepatitis C in the course of employment and are unable to continue to work in their profession because of a significant risk that such work would pose to other persons and that risk cannot be eliminated.

(2) For purposes of subsection (1) of this section, a health care professional who was employed on a full-time basis in their profession shall be presumed to have contracted hepatitis C in the course of employment. This presumption may be rebutted by a preponderance of the evidence that demonstrates that the health care professional contracted hepatitis C as a result of activities or circumstances not related to employment. [2003 c 273 § 4.]

50.20.042 Unemployed aerospace workers—Training. Aerospace workers unemployed as the result of downsizing and restructuring of the aerospace industry will be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043. [1993 c 226 § 7.]

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

50.20.043 Training provision. No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW

50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

An individual who the commissioner determines to be a dislocated worker as defined by RCW 50.04.075 and who is satisfactorily progressing in a training program approved by the commissioner shall be considered to be in training with the approval of the commissioner. [2003 2nd sp.s. c 4 § 30; 1985 c 40 § 1; 1984 c 181 § 2; 1971 c 3 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1985 c 40: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 40 § 2.]

Severability—1985 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 40 § 3.]

Effective date—1985 c 40: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 40 § 4.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.20.044 Ineligibility for benefits for failure to attend job search workshop or training course. If an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. [1984 c 205 § 8.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.20.050 Disqualification for leaving work voluntarily without good cause. (1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(2004 Ed.)

(b) An individual shall not be considered to have left work voluntarily without good cause when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and

placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs. [2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.060 Disqualification from benefits due to misconduct. With respect to claims that have an effective date before January 4, 2004, an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct. [2003 2nd sp.s. c 4 § 7; 2000 c 2 § 13; 1993 c 483 § 9; 1982 1st ex.s. c 18 § 16; 1977 ex.s. c 33 § 5; 1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998-212. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.065 Cancellation of hourly wage credits due to felony or gross misdemeanor. With respect to claims that have an effective date before January 4, 2004:

(1) An individual who has been discharged from his or her work because of a felony or gross misdemeanor of which he or she has been convicted, or has admitted committing to a competent authority, and that is connected with his or her work shall have all hourly wage credits based on that employment canceled.

(2) The employer shall notify the department of such an admission or conviction, not later than six months following the admission or conviction.

(3) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(4) All benefits that are paid in error based on wage/hour credits that should have been removed from the claimant's base year are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2003 2nd sp.s. c 4 § 8; 1993 c 483 § 11.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.20.066 Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for ten calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to ten times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

(2) An individual who has been discharged from his or her work because of gross misconduct shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(3) The employer shall notify the department of a felony or gross misdemeanor of which an individual has been convicted, or has admitted committing to a competent authority, not later than six months following the admission or conviction.

(4) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(5) All benefits that are paid in error based on this section are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2003 2nd sp.s. c 4 § 9.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

(2004 Ed.)

50.20.070 Disqualification for misrepresentation.

Irrespective of any other provisions of this title an individual shall be disqualified for benefits for any week with respect to which he has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and has thereby obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks commencing with the first week for which he completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section: PROVIDED, That such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section, but all overpayments established by such determination of disqualification shall be collected as otherwise provided by this title. [1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998-213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.080 Disqualification for refusal to work. An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual, or to return to his or her customary self-employment (if any) when so directed by the commissioner. Such disqualification shall begin with the week of the refusal and thereafter for seven calendar weeks and continue until the individual has obtained bona fide work in employment covered by this title and earned wages in that employment of not less than seven times his or her suspended weekly benefit amount. [2000 c 2 § 14; 1993 c 483 § 10; 1959 c 321 § 1; 1953 ex.s. c 8 § 11; 1951 c 215 § 14; 1949 c 214 § 15; 1945 c 35 § 76; Rem. Supp. 1949 § 9998-214. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1959 c 321: "This act shall take effect on July 5, 1959." [1959 c 321 § 4.]

50.20.085 Disqualification for receipt of industrial insurance disability benefits. An individual is disqualified from benefits with respect to any day or days for which he or she is receiving, has received, or will receive compensation under RCW 51.32.060 or 51.32.090. [1991 c 117 § 2; 1986 c 75 § 1.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

50.20.090 Strike or lockout disqualification—When inapplicable. (1) An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that the individual's unemployment is:

(a) Due to a strike at the factory, establishment, or other premises at which the individual is or was last employed; or

(b) Due to a lockout by his or her employer who is a member of a multi-employer bargaining unit and who has locked out the employees at the factory, establishment, or other premises at which the individual is or was last employed after one member of the multi-employer bargaining unit has been struck by its employees as a result of the multi-employer bargaining process.

(2) Subsection (1) of this section shall not apply if it is shown to the satisfaction of the commissioner that:

(a) The individual is not participating in or financing or directly interested in the strike or lockout that caused the individual's unemployment; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the strike or lockout, there were members employed at the premises at which the strike or lockout occurs, any of whom are participating in or financing or directly interested in the strike or lockout: PROVIDED, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subdivision, be deemed to be a separate factory, establishment, or other premises.

(3) Any disqualification imposed under this section shall end when the strike or lockout is terminated. [1988 c 83 § 1; 1987 c 2 § 1; 1953 ex.s. c 8 § 12; 1945 c 35 § 77; Rem. Supp. 1945 § 9998-215. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Labor dispute study—1988 c 83: "(1) The department of employment security shall study and analyze the impact of section 1 of this act on the number of claimants receiving unemployment insurance benefits and the total amount of benefits paid, and on the type, frequency, duration, and outcome of labor disputes. In performing the study the department shall specifically address the impact of section 1(1)(b) of this act on the above subjects.

(2) In performing its duties under this section the department shall periodically convene meetings with representatives of labor and management, including but not limited to representatives of the following: A general business association; an organization broadly representing organized labor; the construction industry; construction industry organized labor; the trade industry; trade industry organized labor; the manufacturing industry; manufacturing industry organized labor; the service industry; service industry organized labor; the transportation industry; transportation industry organized labor; the communication industry; and communication industry organized labor.

(3) For the purpose of studying and analyzing the impact of section 1(1)(b) of this act the department shall periodically convene, in addition to those meetings specified in subsection (2) of this section, meetings with representatives of labor and management from industries with multi-employer bargaining units, including but not limited to representatives from a general business association; an organization broadly representing organized labor; the retail trade industry; and retail trade industry organized labor.

(4) The department shall report its findings to the governor, the senate economic development and labor committee, and the house of representatives commerce and labor committee, or the appropriate successor committees, by the commencement of the 1990 regular session of the legislature." [1988 c 83 § 2.]

Effective date—1988 c 83: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this act [March 20, 1988]." [1988 c 83 § 3.]

Applicability—Effective date—1987 c 2: "(1) This act shall apply retroactively to all applicable employers and employees as of November 16, 1986.

(2) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [February 20, 1987]." [1987 c 2 § 4.]

Severability—1987 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 2 § 5.]

50.20.095 Disqualification for attending school or institution of higher education. Any individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, shall be disqualified from receiving benefits or waiting period credit for any week during the school term commencing with the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is the earlier, and ending with the week immediately before the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction per week: PROVIDED, That registration for less than twelve hours will be for a period of sixty days or longer. The term "school" includes primary schools, secondary schools, and "institutions of higher education" as that phrase is defined in RCW 50.44.037.

This disqualification shall not apply to any individual who:

(1) Is in approved training within the meaning of RCW 50.20.043; or

(2) Demonstrates to the commissioner by a preponderance of the evidence his or her actual availability for work, and in arriving at this determination the commissioner shall consider the following factors:

(a) Prior work history;

(b) Scholastic history;

(c) Past and current labor market attachment; and

(d) Past and present efforts to seek work. [1980 c 74 § 4; 1977 ex.s. c 33 § 8.]

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

50.20.098 Services performed by alien. (1) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of 8 U.S.C. Sec. 1182(d)(5): PROVIDED, That any modifications to 26 U.S.C. Sec. 3304(a)(14) as provided by PL 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by 26 U.S.C. Sec. 3301 shall be deemed applicable under this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence. [1993 c 58 § 2; 1989 c 92 § 1; 1977 ex.s. c 292 § 10.]

Conflict with federal requirements—Severability—Effective date—1993 c 58: See notes following RCW 50.04.165.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.099 Training benefits—Eligibility to work in the United States. (1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under RCW 50.22.150.

(2) By July 1, 2002, the employment security department shall:

(a) Develop and implement an effective method for determining, where appropriate, eligibility to work in the United States for individuals applying for unemployment benefits under this title;

(b) Review verification systems developed by federal agencies for verifying a person's eligibility to receive unemployment benefits under this title and evaluate the effectiveness of these systems for use in this state; and

(c) Report its initial findings to the legislature by September 1, 2000, and its final report by July 1, 2002.

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's status as a qualified or authorized alien, the requirements of this section shall not apply. [2000 c 2 § 10.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.20.100 Suitable work factors. (1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

(2) For individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

(2004 Ed.)

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking. [2004 c 110 § 2; 2003 2nd sp.s. c 4 § 13; 2002 c 8 § 2; 1989 c 380 § 80; 1977 ex.s. c 33 § 6; 1973 1st ex.s. c 158 § 6; 1945 c 35 § 78; Rem. Supp. 1945 § 9998-216.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942 and 15.58.943.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.110 Suitable work exceptions. Notwithstanding any other provisions of this title, no work shall be deemed to be suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; or

(2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if as a condition of being employed the individual would be required by the employing unit to join a company union or to resign from or refrain from joining any bona fide labor organization. [1945 c 35 § 79; Rem. Supp. 1945 § 9998-217.]

50.20.113 Unemployment of sport or athletic event participant during period between sport seasons. Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the latter of the seasons (or similar periods). [1977 ex.s. c 292 § 6.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.115 Unemployment due to vacation. When an unemployed individual is qualified for receipt of unemployment compensation benefits by the specific provisions of RCW 50.20.010, 50.20.120 and 50.20.130, and such individual is not specifically disqualified from receiving such benefits by reason of the provisions of RCW 50.20.090, 50.20.050, 50.20.060, 50.20.070 or 50.20.080, he shall, for

all purposes of the unemployment compensation act, be deemed to be involuntarily unemployed and entitled to unemployment compensation benefits: PROVIDED, That the cessation of operations by an employer for the purpose of granting vacations, whether by union contract or other reasons, shall in no manner be construed to be a voluntary quit nor a voluntary unemployment on the part of the employees. [1983 c 3 § 158; 1951 c 265 § 12.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.117 Jury service. No otherwise eligible individual shall be denied benefits for any week because he or she is serving as a prospective or impaneled juror in any court of this state. Compensation received for service as a juror shall not be considered wages subject to contributions under this title nor shall such compensation be considered in determining base-year wages, but it shall be considered remuneration for purposes of a deduction from benefits under RCW 50.20.130. [1979 ex.s. c 135 § 6.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

50.20.118 Unemployment while in approved training. (1) Notwithstanding any other provision of this chapter, an otherwise eligible individual shall not be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Trade Act of 1974, P.L. 93-618, nor may that individual be denied benefits for any such week by reason of leaving work which is not suitable employment to enter such training, or for failure to meet any requirement of federal or state law for any such week which relates to the individual's availability for work, active search for work, or refusal to accept work.

(2) For the purposes of this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as described for the purposes of the Trade Act of 1974, P.L. 93-618), if the wages for such work are not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974, P.L. 93-618. [1982 1st ex.s. c 18 § 7.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.20.119 Part-time workers. (1) With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of seventeen or fewer hours per week by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

(2) For purposes of this section, "part-time worker" means an individual who: (a) Earned wages in "employment" in at least forty weeks in the individual's base year; and (b) did not earn wages in "employment" in more than seventeen hours per week in any weeks in the individual's base year. [2003 2nd sp.s. c 4 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.120 Amount of benefits. (1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c) With respect to claims with an effective date on or after January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16;

1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1984 c 205: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

Severability—1984 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

Effective dates—1984 c 205: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

- (1) Sections 6 and 13 of this act shall take effect on January 1, 1985;
- (2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and
- (3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Effective date—1959 c 321: See note following RCW 50.20.080.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.130 Deduction from weekly benefit amount. If an eligible individual is available for work for less than a full week, he shall be paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work: PROVIDED, That if he is unavailable for work for three days or more of a week, he shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him with respect to such week which is in excess of five dollars. Such benefit, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 12; 1973 2nd ex.s. c 7 § 3; 1959 c 321 § 3; 1951 c 215 § 15; 1949 c 214 § 17; 1945 c 35 § 81; Rem. Supp. 1949 § 9998-219. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1959 c 321: See note following RCW 50.20.080.

50.20.140 Filing applications and claims—Definitions. An application for initial determination, a claim for waiting period, or a claim for benefits shall be filed in accordance with such rules as the commissioner may prescribe. An application for an initial determination may be made by any individual whether unemployed or not. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in his or her employment and shall make available to each such individual at the time he or she becomes unemployed, a printed statement of such rules and such notices, instructions, and other material as the commissioner may by rule prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to the employer.

The term "application for initial determination" shall mean a request in writing, or by other means as determined by the commissioner, for an initial determination. The term "claim for waiting period" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for waiting period have been met. The term "claim for benefits" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for receipt of benefits have been met.

A representative designated by the commissioner shall take the application for initial determination and for the claim for waiting period credits or for benefits. When an application for initial determination has been made, the employment security department shall promptly make an initial determination which shall be a statement of the applicant's base year wages, his or her weekly benefit amount, his or her maximum amount of benefits potentially payable, and his or her benefit year. Such determination shall fix the general conditions under which waiting period credit shall be granted and under which benefits shall be paid during any period of unemployment occurring within the benefit year fixed by such determination. [1998 c 161 § 2; 1951 c 215 § 4; 1945 c 35 § 82; Rem. Supp. 1945 § 9998-220. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Finding—Intent—1998 c 161: "The legislature finds that the shift by the employment security department from in-person written initial applications for unemployment insurance benefits to a call center approach creates opportunities for improved service but also raises serious concerns. Eliminating face-to-face contact may increase the potential for fraud and reduce the probability that claimants will utilize existing reemployment resources. Therefore, it is the intent of the legislature that if the written application process is to be eliminated, the employment security department must ensure that unemployment insurance claimants remain actively involved in reemployment activities and that an independent evaluation be conducted of the call center approach to unemployment insurance." [1998 c 161 § 1.]

Evaluation of call center: "(1) The joint legislative audit and review committee, in consultation with members of the senate and house of representatives commerce and labor committees and the unemployment insurance advisory committee, shall conduct an evaluation of the new call center approach to unemployment insurance. The evaluation shall review the performance of the call center system, including, but not limited to, the: (a) Promptness of payments; (b) number and types of errors; (c) amount and types of fraud; and (d) level of overpayments and underpayments, compared with the current system.

(2) The joint legislative audit and review committee is directed to contract with a private entity consistent with the provisions of chapter 39.29 RCW. The committee shall consult with the unemployment insurance advisory committee in the design of the request for proposals from potential contractors and shall use the advisory committee to evaluate the responses. The joint legislative audit and review committee shall provide a report on its findings and recommendations to the appropriate standing committee of the senate and house of representatives by September 1, 2001." [1998 c 161 § 5.]

Funding—1998 c 161 § 5: "The employment security department is authorized to expend funds provided under RCW 50.24.014(1)(b) for the purposes of the evaluation provided for in section 5 of this act." [1998 c 161 § 6.]

50.20.150 Notice of application or claim. The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account. [1970 ex.s. c 2 § 7; 1951 c 215 § 5; 1945 c 35 § 83; Rem. Supp. 1945 § 9998-221. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: PROVIDED, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: PROVIDED, That the commissioner may reconsider and redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom: PROVIDED, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: AND PROVIDED FURTHER, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having

been made after consideration of the provisions of RCW 50.20.010(1)(c), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of fraud, misrepresentation, or willful nondisclosure. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [2003 2nd sp.s. c 4 § 31; 1990 c 245 § 4; 1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998-222. Prior: 1941 c 253 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

50.20.170 Payment of benefits. An individual who has received an initial determination finding that he is potentially entitled to receive waiting period credit or benefits shall, during the benefit year, be given waiting period credit or be paid benefits in accordance with such initial determination for any week with respect to which the conditions of eligibility for such credit or benefits, as prescribed by this title, are met, unless the individual is denied waiting period credit or benefits under the disqualification provisions of this title.

All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. [1945 c 35 § 85; Rem. Supp. 1945 § 9998-223. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.20.180 Denial of benefits. If waiting period credit or the payment of benefits shall be denied to any claimant for any week or weeks, the claimant and such other interested party as the commissioner by regulation prescribes shall be promptly issued written notice of the denial and the reasons therefor. In any case where the department is notified in accordance with such regulation as the commissioner prescribes or has reason to believe that the claimant's right to waiting period credit or benefits is in issue because of his separation from work for any reason other than lack of work, the department shall promptly issue a determination of allowance or denial of waiting period credit or benefits and the reasons therefor to the claimant, his most recent employing unit as stated by the claimant, and such other interested party as the commissioner by regulation prescribes. Notice that waiting period credit or benefits are allowed or denied shall suffice for the particular weeks stated in the notice or until the condition upon which the allowance or denial was based has been changed. [1951 c 215 § 7; 1945 c 38 § 86; Rem. Supp. 1945 § 9998-224. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the

warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full. The interest penalty shall be used, first, to fully fund either social security number cross-match audits or other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid and, second, to fund other detection and recovery of overpayment and collection activities. [2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—1995 c 90: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

Application—1995 c 90: "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

Effective date—1995 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 90 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.191 Authority to compromise benefit overpayments. See RCW 50.24.020.

50.20.192 Collection of benefit overpayments, limitation of actions. See RCW 50.24.190.

50.20.193 Chargeoff of uncollectible benefit overpayments. See RCW 50.24.200.

50.20.195 Assessed interest—Use. All receipts from interest assessed against unemployment insurance claimants shall be deposited in the administrative contingency fund and shall be used for the purpose of RCW 50.20.190(6). [1993 c 483 § 14.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.20.200 Nonliability of state. Benefits shall be deemed to be due and payable under this title only to the extent provided in this title and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commissioner shall be liable for any amount in excess of such sums. [1945 c 35 § 88; Rem. Supp. 1945 § 9998-226.]

50.20.210 Notification of availability of basic health plan. The commissioner shall notify any person filing a claim under this chapter who resides in a local area served by the Washington basic health plan of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the commissioner of a closure of enrollment in the area. The commissioner shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate employment service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 16.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

50.20.220 Federal income tax deduction and withholding—Notice—Rules. (1) An individual filing a new claim for unemployment insurance must, at the time of filing such claim, be advised that:

(a) Unemployment insurance is subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment insurance at the amount specified in the federal internal revenue code; and

(d) The individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) The commissioner shall adopt rules to implement this section. Amounts shall be deducted and withheld in accordance with the priorities established in rules adopted by the commissioner. [1996 c 28 § 2.]

Findings—1996 c 28: "The legislature finds that:

(1) The unique federal and state partnership of the unemployment insurance program places a special responsibility on states, and selected

Congressional legislation requires conforming legislation at the state level;

(2) The most recent conformity legislation requires states to offer unemployed workers the option of having the employment security department withhold federal income tax from unemployment insurance benefits;

(3) Unemployment benefits have been subject to income tax for several years, and voluntary withholding is a reasonable strategy some claimants will use to spread the payment of their federal income tax liability over several weeks or months rather than a single payment at income tax time; and

(4) Conformity with federal law supports the federal and state partnership and responds to the needs of this state's unemployed workers." [1996 c 28 § 1.]

Conflict with federal requirements—1996 c 28: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 28 § 3.]

Severability—1996 c 28: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 28 § 4.]

Effective date—Application—1996 c 28: "This act shall take effect December 31, 1996, and shall apply to payments made after December 31, 1996." [1996 c 28 § 5.]

50.20.230 Electronic labor exchange system. The employment security department will ensure that within a reasonably short period of time after the initiation of benefits, all unemployment insurance claimants, except those with employer attachment, union referral, in commissioner-approved training, or the subject of antiharassment orders, register for job search in an electronic labor exchange system that supports direct employer access for the purpose of selecting job applicants. [1998 c 161 § 3.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

50.20.240 Job search monitoring. (1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement a job search monitoring program. Effective January 4, 2004, the department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department may use interactive voice technology and other electronic means to ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. With regard to claims with an effective date before January 4, 2004, the evidence must demonstrate contacts with at least three employers per week

or documented in-person job search activity at the local reemployment center. With regard to claims with an effective date on or after January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

(c) In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190. [2004 c 110 § 1; 2003 2nd sp.s. c 4 § 10; 2002 c 8 § 3; 1998 c 161 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Chapter 50.22 RCW

EXTENDED AND ADDITIONAL BENEFITS

(Formerly: Extended benefits)

Sections

50.22.010	Definitions.
50.22.020	Application of statute and rules—Eligibility for extended benefits.
50.22.030	Extended benefit eligibility conditions—Interstate claim.
50.22.040	Weekly extended benefit amount.
50.22.050	Total extended benefit amount—Reduction.
50.22.060	Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment.
50.22.105	Supplemental additional benefits—February 26, 1994, through December 31, 1995—Eligibility.
50.22.130	Training benefits program—Intent.
50.22.140	Employment security department authorized to pay training benefits—Expenditures.
50.22.150	Training benefits—Eligibility—Payment—Local work force development council to identify declining and high demand occupations and skill sets—Rules.

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-ser-

vicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [1993 c 483 § 15; 1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

(2004 Ed.)

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Application—1977 ex.s. c 292 § 11: "The provisions of section 11 of this 1977 amendatory act shall apply to the week ending May 21, 1977, and all weeks thereafter." [1977 ex.s. c 292 § 25.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Emergency—Effective date—1971 c 1: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this enactment [January 17, 1971]." [1971 c 1 § 11.]

Repealer—Effect as to benefits—1971 c 1: "Section 23, chapter 2, Laws of 1970 ex. sess. and RCW 50.20.127 are each hereby repealed. No benefits shall be paid pursuant to RCW 50.20.127 for weeks commencing on or after the effective date of this 1971 amendatory act." [1971 c 1 § 10.]

50.22.020 Application of statute and rules—Eligibility for extended benefits. When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: PROVIDED, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: PROVIDED, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with

respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing and was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981: PROVIDED HOWEVER, That the provisions of subsections (1) through (7) of this section shall not apply to those weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. [1993 c 483 § 16; 1993 c 58 § 3; 1981 c 35 § 8; 1971 c 1 § 3.]

Reviser's note: This section was amended by 1993 c 58 § 3 and by 1993 c 483 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective date—1993 c 58: See notes following RCW 50.04.165.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.22.030 Extended benefit eligibility conditions—Interstate claim. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds with respect to such week that:

(a) The individual is an "exhaustee" as defined in RCW 50.22.010;

(b) He or she has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) He or she has earned wages in the applicable base year of at least:

(i) Forty times his or her weekly benefit amount; or

(ii) One and one-half times his or her insured wages in the calendar quarter of the base period in which the insured wages are the highest, for weeks of unemployment on or after July 3, 1992.

(2) An individual filing an interstate claim in any state under the interstate benefit payment plan shall not be eligible to receive extended benefits for any week beyond the first two weeks claimed for which extended benefits are payable unless an extended benefit period embracing such week is also in effect in the agent state. [1993 c 483 § 17; 1982 1st ex.s. c 18 § 4; 1981 c 35 § 9; 1971 c 1 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1982 1st ex.s. c 18: "Sections 2, 9[10], 10[11], 11[12], 16[17], and 17[18] of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 2, 1982]. Section 4 of this act shall take effect on September 26, 1982." [1982 1st ex.s. c 18 § 23.] The bracketed section references in this section correct erroneous internal references which occurred during the engrossing process after a new section was added by amendment.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Construction—1981 c 35 §§ 3, 5, 8, and 9: "Sections 3, 5, and 8 of this 1981 amendatory act are being enacted to comply with the provisions of Pub. L. 96-499. Ambiguities in those sections should be interpreted in accordance with provisions of that federal law. Section 9 of this 1981 amendatory act is enacted pursuant to Pub. L. 96-364. Any ambiguities in that section should be construed in accordance with that federal law." [1981 c 35 § 15.]

Effective dates—1981 c 35 §§ 1, 2, 3, 5, 8, 9, and 12: "Sections 1, 2, 3, 5, 8, and 12 of this amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately [April 20, 1981]; section 9 of this amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect with weeks beginning on and after June 1, 1981." [1981 c 35 § 16.]

Severability—1981 c 35: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 35 § 17.]

50.22.040 Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. However, for those individuals whose eligibility period for extended benefits commences with weeks beginning after October 1, 1983, the weekly benefit amount, as computed in RCW 50.20.120(2) and payable under this section, if not a multiple of one dollar,

shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 13; 1971 c 1 § 5.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.22.050 Total extended benefit amount—Reduction. (1) The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him or her under this title in his or her applicable benefit year;

(b) Thirteen times his or her weekly benefit amount which was payable to him or her under this title for a week of total unemployment in the applicable benefit year; or

(c) Thirty-nine times his or her weekly benefit amount which was payable to him or her under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him or her under this title with respect to the benefit year.

(2) Notwithstanding any other provision of this chapter, if the benefit year of any eligible individual ends within an extended benefit period, the extended benefits which the individual would otherwise be entitled to receive with respect to weeks of unemployment beginning after the end of the benefit year and within the extended benefit period shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amount as a trade readjustment allowance within that benefit year, multiplied by the individual's weekly extended benefit amount.

(3) Effective for weeks beginning in a high unemployment period as defined in RCW 50.22.010(3) the total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Eighty percent of the total amount of regular benefits that were payable to him or her under this title in his or her applicable benefit year;

(b) Twenty times his or her weekly benefit amount that was payable to him or her under this title for a week of total unemployment in the applicable benefit year; or

(c) Forty-six times his or her weekly benefit amount that was payable to him or her under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid, or deemed paid, to him or her under this title with respect to the benefit year. [1993 c 483 § 18; 1982 1st ex.s. c 18 § 5; 1971 c 1 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.060 Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment. (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the commissioner shall make an appropriate public announcement.

(2004 Ed.)

(2) Computations required by the provisions of RCW 50.22.010(4) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor. [1982 1st ex.s. c 18 § 3; 1971 c 1 § 7.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.105 Supplemental additional benefits—February 26, 1994, through December 31, 1995—Eligibility. Supplemental additional benefits shall be available to individuals who, under this chapter, had a balance of extended benefits available after payments up to and including the week ending February 26, 1994.

(1) Total supplemental additional benefits payable shall be equal to the extended benefit balance remaining after extended benefit payments for up to and including the week ending February 26, 1994, and shall be paid at the same weekly benefit amount.

(2) The week ending March 5, 1994, is the first week for which supplemental additional benefits are payable.

(3) Supplemental additional benefits shall be paid under the same terms and conditions as extended benefits.

(4) Supplemental additional benefits are not payable for weeks more than one year beyond the end of the benefit year of the regular claim.

(5) Weeks of supplemental additional benefits may not be paid for weeks that begin after the start of a new extended benefit period, or any totally federally funded benefit program with eligibility criteria and benefits comparable to additional benefits.

(6) Weeks of supplemental additional benefits may not be paid for weeks of unemployment beginning after December 31, 1995.

(7) The department shall seek federal funding to reimburse the state for the supplemental additional benefits paid under this section. Any federal funds received by the state for reimbursement shall be deposited in the unemployment trust fund solely for the payment of benefits under this title. [1994 c 3 § 3.]

Conflict with federal requirements—Severability—Effective dates—1994 c 3: See notes following RCW 50.04.020.

50.22.130 Training benefits program—Intent. It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

(1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;

(2) To be eligible for retraining, an individual must have a long-term attachment to the labor force;

(3) Training must enhance the individual's marketable skills and earning power; and

(4) Retraining must be targeted to those industries or skills that are in high demand within the labor market.

Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature

[Title 50 RCW—page 51]

that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year. [2000 c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.140 Employment security department authorized to pay training benefits—Expenditures. (1) The employment security department is authorized to pay training benefits under RCW 50.22.150, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. For each fiscal year beginning after June 30, 2002, the commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years. The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.

(2) After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty-four million dollars for training benefits under RCW 50.22.150 for individuals in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period. [2002 c 149 § 1; 2000 2nd sp.s. c 1 § 916; 2000 c 2 § 7.]

Conflict with federal requirements—2002 c 149: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2002 c 149 § 15.]

Severability—2002 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 149 § 16.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.150 Training benefits—Eligibility—Payment—Local work force development council to identify

declining and high demand occupations and skill sets—Rules. (1) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;
 (b) Except as provided under subsection (2) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(2) Until June 30, 2002, the following individuals who meet the requirements of subsection (1) of this section may, without regard to the tenure requirements under subsection (1)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

(c) An exhaustee who has base year employment in the fishing industry assigned the standard industrial classification code "0912" or any equivalent codes in the North American industry classification system code.

(3) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of *RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the work force training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(5) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection (1) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection (2) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhaustees eligible under subsection (1) of this section from industries listed under subsection (2)(a) of this section, for claims filed on or after June 30, 2002, but before

January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(6) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(7)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (1)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(8) An individual eligible to receive a trade readjustment allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(9) All base year employers are interested parties to the approval of training and the granting of training benefits.

(10) By July 1, 2001, each local work force development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations

and skill sets that are in high demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local work force development councils must use state and locally developed labor market information. Thereafter, each local work force development council shall update this information annually or more frequently if needed.

(11) The commissioner shall adopt rules as necessary to implement this section. [2002 c 149 § 2; 2000 c 2 § 8.]

***Reviser's note:** RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Effective dates—2002 c 149 §§ 2 and 8: "(1) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002].

(2) Section 8 of this act takes effect January 1, 2005." [2002 c 149 § 19.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: "(1) Sections 1, 2, 4, 5, and 15 of this act apply to rate years beginning on or after January 1, 2000.

(2)(a) Except as provided under (b) of this subsection, sections 8 and 12 through 14 of this act apply beginning with weeks of unemployment that begin on or after the Sunday following the day on which the governor signs chapter 2, Laws of 2000 [February 13, 2000].

(b) For individuals eligible under section 8(2)(a) of this act who are enrolled in a national reserve grant on February 7, 2000, section 8 of this act applies beginning with weeks of unemployment that begin after the termination of their needs-related payments under a national reserve grant." [2000 c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.010	Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration.
50.24.014	Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions.
50.24.015	Wages—Deemed paid when contractually due.
50.24.020	Authority to compromise.
50.24.030	Contributions erroneously paid to United States or another state.
50.24.040	Interest on delinquent contributions.
50.24.050	Lien for contributions generally.
50.24.060	Lien in event of insolvency or dissolution.
50.24.070	Order and notice of assessment.
50.24.080	Jeopardy assessment.
50.24.090	Distraint, seizure, and sale.
50.24.100	Distraint procedure.
50.24.110	Notice and order to withhold and deliver.
50.24.115	Warrant—Authorized—Filing—Lien—Enforcement.
50.24.120	Collection by civil action.
50.24.125	Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof.
50.24.130	Contractor's and principal's liability for contributions—Exceptions.
50.24.140	Collection remedies cumulative.
50.24.150	Contribution adjustments and refunds.
50.24.160	Election of coverage.
50.24.170	Joint accounts.
50.24.180	Injunction proceedings.
50.24.190	Limitation of actions.
50.24.200	Chargeoff of uncollectible accounts.
50.24.210	Contributions due and payable upon termination or disposal of business—Successor liability.

50.24.010 Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration. Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars, except that the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars. However, the amount subject to tax shall be twenty-four thousand three hundred dollars for rate year 2000.

In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of

any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: PROVIDED, FURTHER, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [2000 c 2 § 2; 1984 c 205 § 2; 1977 ex.s. c 33 § 9; 1971 c 3 § 13; 1970 ex.s. c 2 § 8; 1949 c 214 § 18; 1945 c 35 § 89; Rem. Supp. 1949 § 9998-227. Prior: 1943 c 127 § 5; 1941 c 253 § 5; 1939 c 214 § 5; 1937 c 162 § 7.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(9). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.

(c) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes of conducting an evaluation of the call center approach to unemployment insurance under section 5, chapter 161, Laws of 1998. During the 1997-1999 fiscal biennium, any surplus from contributions payable under this subsection (c) may be deposited in the unemployment compensation trust fund, used to support tax and wage automated systems projects that simplify and streamline employer reporting, or both.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15. Prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

[Title 50 RCW—page 56]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Construction—1998 c 346: "This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1)." [1998 c 346 § 912.]

Severability—1998 c 346: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 346 § 914.]

Effective date—1998 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 346 § 915.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Conflict with federal requirements—1994 c 187: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 187 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.24.015 Wages—Deemed paid when contractually due. For the purposes of liability for, collection of, and assessment of contributions, wages shall be deemed paid when such wages are contractually due but are unpaid because of the refusal or inability of the employer to make such payment. [1973 1st ex.s. c 158 § 19.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.020 Authority to compromise. The commissioner may compromise any claim for contributions, interest, or penalties, and any amount owed by an individual because of benefit overpayments, whether reduced to judgment or otherwise, existing or arising under this title in any case where collection of the full claim, in the case of contributions, interest, or penalties, would result in the insolvency of the employing unit or individual from whom such contributions, interest, or penalties are claimed, and any case where collection of the full amount of benefit overpayments made to an individual, whether reduced to judgment or otherwise, would be against equity and good conscience.

Whenever a compromise is made by the commissioner in the case of a claim for contributions, interest, or penalties, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of contributions, interest, and penalties imposed by law and claimed due, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of the ben-

(2004 Ed.)

efit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement.

If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [1983 1st ex.s. c 23 § 14; 1955 c 286 § 5; 1945 c 35 § 90; Rem. Supp. 1945 § 9998-228.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1955 c 286: "The provisions of section 5 of this act shall not become effective until the 3rd day of July, 1955." [1955 c 286 § 17.]

50.24.030 Contributions erroneously paid to United States or another state. Payments of contributions erroneously paid to an unemployment compensation fund of another state or to the United States government which should have been paid to this state and which thereafter shall be refunded by such other state or the United States government and paid by the employer to this state, shall be deemed to have been paid to this state and to have filed contribution reports thereon at the date of payment to the United States government or such other state. [1953 ex.s. c 8 § 15; 1949 c 214 § 19; 1945 c 35 § 91; Rem. Supp. 1949 § 9998-229.]

50.24.040 Interest on delinquent contributions. If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [1987 c 111 § 3; 1973 1st ex.s. c 158 § 8; 1953 ex.s. c 8 § 16; 1945 c 35 § 92; Rem. Supp. 1945 § 9998-230. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

(2004 Ed.)

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.050 Lien for contributions generally. The claim of the employment security department for any contributions, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent contributions, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of contributions. [1981 c 302 § 39; 1979 ex.s. c 190 § 2; 1973 1st ex.s. c 158 § 9; 1947 c 215 § 19; 1945 c 35 § 93; Rem. Supp. 1947 § 9998-231. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Severability—1981 c 302: See note following RCW 19.76.100.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Penalties for late reports or contributions: RCW 50.12.220.

50.24.060 Lien in event of insolvency or dissolution. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, contributions, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien will be prior to all other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions, interest, or penalties then or thereafter due shall be entitled to such

[Title 50 RCW—page 57]

priority as provided in that act, as amended. [1983 1st ex.s. c 23 § 15; 1945 c 35 § 94; Rem. Supp. 1945 § 9998-232. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.24.070 Order and notice of assessment. At any time after the commissioner shall find that any contributions, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the employer as shown by the records of the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [1987 c 111 § 4; 1979 ex.s. c 190 § 3; 1945 c 35 § 95; Rem. Supp. 1945 § 9998-233. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Commencement of actions: Chapter 4.28 RCW.

50.24.080 Jeopardy assessment. If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent. [1979 ex.s. c 190 § 4; 1945 c 35 § 96; Rem. Supp. 1945 § 9998-234. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.090 Distraint, seizure, and sale. If the amount of contributions, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1979 ex.s. c 190 § 5; 1945 c 35 § 97; Rem. Supp. 1945 § 9998-235. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Executions: Chapter 6.17 RCW.

Personal exemptions, generally: Chapter 6.15 RCW.

50.24.100 Distraint procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has

been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [1979 ex.s. c 190 § 6; 1949 c 214 § 20; 1945 c 35 § 98; Rem. Supp. 1949 § 9998-236. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.110 Notice and order to withhold and deliver.

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, by certified mail, return receipt requested, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdi-

vision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [1990 c 245 § 6; 1987 c 111 § 5; 1979 ex.s. c 190 § 7; 1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998-237.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

50.24.115 Warrant—Authorized—Filing—Lien—Enforcement. Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his last known address within five days of filing with the clerk. [2001 c 146 § 8; 1983 1st ex.s. c 23 § 16; 1979 ex.s. c 190 § 8; 1975 1st ex.s. c 228 § 15.]

(2004 Ed.)

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.24.120 Collection by civil action. (1) If after due notice, any employer defaults in any payment of contributions, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect contributions, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title and cases arising under the industrial insurance laws of this state.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: PROVIDED, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending.

(3) The courts of this state shall in the manner provided in subsections (1) and (2) of this section entertain actions to collect contributions, interest, or penalties for which liability has accrued under the employment security law of any other state or of the federal government. [1979 ex.s. c 190 § 9; 1959 c 266 § 5; 1953 ex.s. c 8 § 17; 1945 c 35 § 100; Rem. Supp. 1945 § 9998-238. Prior: 1943 c 127 § 10.]

Civil procedure: Title 4 RCW.

Industrial insurance: Title 51 RCW.

50.24.125 Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof. Delinquent payments in lieu of contributions due the unemployment compensation fund and interest and penalties may be recovered from any of the political subdivisions of this state or any instrumentality of a political subdivision of this state by civil action. The governor is authorized to deduct the amount of delinquent payments in lieu of contributions and interest and penalties from any moneys payable by the state to said political subdivisions or instrumentalities and pay such moneys to the commissioner for deposit in the appropriate account. [1979 ex.s. c 190 § 10; 1971 c 3 § 15.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.130 Contractor's and principal's liability for contributions—Exceptions. No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, interest, and penalties. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions, interest, and penalties and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall not be responsible for any contributions for the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) There is no other person, firm or corporation doing the same work at the same time on the same project except two or more persons, firms or corporations may contract and do the same work at the same time on the same project if each person, firm or corporation has employees;

(3) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(4) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(5) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1982 1st ex.s. c 18 § 15; 1979 ex.s. c 190 § 11; 1973 1st ex.s. c 158 § 10; 1949 c 214 § 21; 1945 c 35 § 101; Rem. Supp. 1949 § 9998-239.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Music or entertainment services purchasers, liability for unpaid contributions: RCW 50.04.148.

50.24.140 Collection remedies cumulative. Remedies given to the state under this title for the collection of contributions, interest, or penalties shall be cumulative and no

action taken by the commissioner or his duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other. [1979 ex.s. c 190 § 12; 1945 c 35 § 102; Rem. Supp. 1945 § 9998-240. Prior: 1943 c 127 § 10.]

50.24.150 Contribution adjustments and refunds. No later than three years after the date on which any contributions, interest, or penalties have been paid, an employer who has paid such contributions, interest, or penalties may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions, interest, penalties, or portion thereof were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: PROVIDED, HOWEVER, That after June 20, 1953, that refunds of interest on delinquent contributions or penalties shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he cannot readily determine that such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing. [1979 ex.s. c 190 § 13; 1953 ex.s. c 8 § 19; 1945 c 35 § 103; Rem. Supp. 1945 § 9998-241. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.160 Election of coverage. Any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by any distinct class or group of individuals or by all individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title from and after the date stated in such approval. Services covered pursuant to this section shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years, only if the employing unit files with the commissioner prior to the fifteenth day of January of such year a written application for termination of coverage. [1977 ex.s. c 292 § 12; 1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998-242.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Severability—1951 c 265: See note following RCW 50.98.070.

Corporate officers, election of coverage: RCW 50.04.165.

50.24.170 Joint accounts. The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account. [1945 c 35 § 105; Rem. Supp. 1945 § 9998-243. Prior: 1941 c 253 § 5.]

50.24.180 Injunction proceedings. Any employer who shall be delinquent in the payment of contributions, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent contributions, interest, and penalties shall have been paid, or until the employer shall have furnished a good and sufficient bond in a sum equal to double the amount of contributions, interest, and penalties already delinquent, plus such further sum as the court shall deem adequate to protect the department in the collection of contributions, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all contributions, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix.

Action pursuant to the provisions of this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [1979 ex.s. c 190 § 14; 1945 c 35 § 106; Rem. Supp. 1945 § 998-244. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.190 Limitation of actions. The commissioner shall commence action for the collection of contributions, interest, penalties, and benefit overpayments imposed by this title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

In case of a false or fraudulent return with intent to evade contributions, interest, or penalties, or in the event of a failure to file a return, the contributions, interest, and penalties may be assessed or a proceeding in court for the collection thereof may be begun at any time. [1979 ex.s. c 190 § 15; 1955 c 286 § 7. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; 1943 c 127 § 10, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.200 Chargeoff of uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interest, penalties, credits, or benefit overpayments if the commissioner is satisfied that there are no cost-effective means of collecting the contributions, interest, penalties, credits, or benefit overpayments. [1989 c 78 § 1; 1979 ex.s. c 190 § 16; 1955 c 286 § 8. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.210 Contributions due and payable upon termination or disposal of business—Successor liability. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any contributions payable under this title shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the contributions due; and any person who becomes a successor to such business shall become liable for the full amount of the contributions and withhold from the purchase price a sum sufficient to pay any contributions due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any contributions due or a certificate that no contribution is due and, if such contribution is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of contributions, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any contributions due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1991 c 117 § 4.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

50.29.010	Definitions.
50.29.020	Experience rating accounts—Benefits not charged—Claims with an effective date before January 4, 2004.
50.29.021	Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.
50.29.025	Contribution rate.
50.29.026	Modification of contribution rate.
50.29.027	Benefit ratio computed for 1985 and thereafter.
50.29.030	"Wages" defined for purpose of prorating benefit charges.
50.29.041	Contribution rate—Solvency surcharge.
50.29.062	Contribution rates for predecessor and successor employers.
50.29.065	Notice of benefits paid and charged to employer's account.
50.29.070	Notice of employer benefit charges and rate of contribution—Review and appeal.
50.29.080	Redetermination and correction of employer's contribution rate.

50.29.010 Definitions. As used in this chapter:

- (1) "Computation date" means July 1st of any year;
- (2) "Cut-off date" means September 30th next following the computation date;
- (3) "Qualification date" means April 1st of the second year preceding the computation date;
- (4) "Rate year" means the calendar year immediately following the computation date;
- (5) "Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his or her employment;
- (6) "Qualified employer" means any employer who (a) reported some employment in the twelve-month period beginning with the qualification date, (b) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and (c) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties may be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest from employment defined under RCW 50.04.160 may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable. [2002 c 149 § 11; 1987 c 213 § 2; 1986 c 111 § 1; 1984 c 205 § 3; 1983 1st ex.s. c 23 § 17; 1973 1st ex.s. c 158 § 11; 1971 c 3 § 16; 1970 ex.s. c 2 § 10.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Construction—1987 c 213: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act, or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted thereunder." [1987 c 213 § 4.]

Conflict with federal requirements—1986 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 111 § 2.]

Severability—1986 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 111 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Wages defined for contribution purposes: RCW 50.04.320.

50.29.020 Experience rating accounts—Benefits not charged—Claims with an effective date before January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date before January 4, 2004.

(2) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(1)(b)(iv) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under *RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in *RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2004 c 110 § 3; 2003 2nd sp.s. c 4 § 20. Prior: 2002 c 149 § 6; 2002 c 8 § 4; 2000 c 2 § 3; 1995 c 57 § 3; 1993 c 483 § 19; 1991 c 129 § 1; 1988 c 27 § 1; prior: 1987

(2004 Ed.)

c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

*Reviser's note: RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Application—1995 c 57: "This act applies only to benefit charges attributable to new claims effective after July 1, 1995." [1995 c 57 § 4.]

Effective date—1995 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995]." [1995 c 57 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—Effective date—Severability—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 42 § 3.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the

same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(b)(iv), as applicable, shall not have their benefits charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who

at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rate. (1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedules of Contributions Rates for Effective Tax Schedule							
From	To	Rate Class	AA	A	B	C	D	E	F	
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47	
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67	
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87	
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98	
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08	
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18	
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27	
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47	
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66	
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86	
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95	
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15	
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34	
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54	
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63	
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73	
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97	
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17	
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40	

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00

0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than two-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent.

(ii) The graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose standard industrial classification code is within major group "01," "02," "07," "091," "203," "209," or "5148," or the equivalent code in the North American industry classification system code, may not exceed six percent:

- (A) Rate class 1 - 78 percent;
 - (B) Rate class 2 - 82 percent;
 - (C) Rate class 3 - 86 percent;
 - (D) Rate class 4 - 90 percent;
 - (E) Rate class 5 - 94 percent;
 - (F) Rate class 6 - 98 percent;
 - (G) Rate class 7 - 102 percent;
 - (H) Rate class 8 - 106 percent;
 - (I) Rate class 9 - 110 percent;
 - (J) Rate class 10 - 114 percent;
 - (K) Rate class 11 - 118 percent; and
 - (L) Rate classes 12 through 40 - 120 percent.
- (iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) The array calculation factor rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) For all other employers not qualified to be in the array, the array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40.

(d) The graduated social cost factor rate for each employer not qualified to be in the array shall be as follows:

(i) For employers whose array calculation factor rate is determined under (c)(i) of this subsection, the social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For employers whose array calculation factor rate is determined under (c)(ii) of this subsection, the social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost

factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code. [2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Reviser's note: (1) Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

(2) The 2002 c 149 § 18 expiration date no longer applies to this section.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995]."

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

(2004 Ed.)

50.29.026 Modification of contribution rate. (1) Beginning with contributions assessed for rate year 1996, a qualified employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, determined under RCW 50.29.025 may be modified as follows:

(a) Subject to the limitations of this subsection, an employer may make a voluntary contribution of an amount equal to part or all of the benefits charged to the employer's account during the two years most recently ended on June 30th that were used for the purpose of computing the employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005. On receiving timely payment of a voluntary contribution, plus a surcharge of ten percent of the amount of the voluntary contribution, the commissioner shall cancel the benefits equal to the amount of the voluntary contribution, excluding the surcharge, and compute a new benefit ratio for the employer. The employer shall then be assigned the contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, applicable to the rate class within which the recomputed benefit ratio is included. The minimum amount of a voluntary contribution, excluding the surcharge, must be an amount that will result in a recomputed benefit ratio that is in a rate class at least four rate classes lower than the rate class that included the employer's original benefit ratio.

(b) Payment of a voluntary contribution is considered timely if received by the department during the period beginning on the date of mailing to the employer the notice of contribution rate applicable for rate years beginning before January 1, 2005, or notice of array calculation factor rate applicable for rate years beginning on or after January 1, 2005, required under this title for the rate year for which the employer is seeking a modification of his or her rate and ending on February 15th of that rate year or, for voluntary contributions for rate year 2000, ending on March 31, 2000.

(c) A benefit ratio may not be recomputed nor a rate be reduced under this section as a result of a voluntary contribution received after the payment period prescribed in (b) of this subsection.

(2) This section does not apply to any employer who has not had an increase of at least twelve rate classes from the previous tax rate year. [2003 2nd sp.s. c 4 § 17; 2000 c 2 § 5; 1995 c 322 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—1995 c 322: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the

state or the granting of federal unemployment tax credits to employers in this state." [1995 c 322 § 2.]

50.29.027 Benefit ratio computed for 1985 and thereafter. For the rate year 1985 and each rate year thereafter, a benefit ratio shall be computed for each qualified employer by dividing the total amount of benefits charged to the account of the employer during the forty-eight consecutive months immediately preceding the computation date by the taxable payrolls of the employer for the same forty-eight month period as reported to the department by the cut-off dates. The division shall be carried to the sixth decimal place with the remaining fraction, if any, disregarded. [1984 c 205 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.030 "Wages" defined for purpose of prorating benefit charges. For the purpose of prorating benefit charges "wages" shall mean "wages" as defined for purpose of payment of benefits in RCW 50.04.320. [1970 ex.s. c 2 § 12.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.29.041 Contribution rate—Solvency surcharge. Beginning with contributions assessed for rate year 2005, the contribution rate of each employer subject to contributions under RCW 50.24.010 shall include a solvency surcharge determined as follows:

(1) This section shall apply to employers' contributions for a rate year immediately following a cut-off date only if, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide fewer than six months of unemployment benefits.

(2) The solvency surcharge shall be the lowest rate necessary, as determined by the commissioner, but not more than two-tenths of one percent, to provide revenue during the applicable rate year that will fund unemployment benefits for the number of months that is the difference between eight months and the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits.

(3) The basis for determining the number of months of unemployment benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B). [2003 2nd sp.s. c 4 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.062 Contribution rates for predecessor and successor employers. Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and bene-

fits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) For transfers before January 1, 2005, the following applies if the successor is not an employer at the time of the transfer. The successor shall pay contributions at the lowest rate determined under either of the following:

(a)(i) For transfers before January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right;

(ii) For transfers on or after January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1 following the transfer, the successor's contribution rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification code system.

(3) For transfers before January 1, 2005, if the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(4) For transfers on or after January 1, 2005, the following applies if the successor is not an employer at the time of the transfer:

(a) Except as provided in (b) of this subsection, the successor shall pay contributions:

(i) At the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of the rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. On and after January 1st following the transfer, the successor's array calculation factor rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(ii) At the contribution rate equal to the sum of the rates determined by the commissioner under RCW 50.29.025(2)(c)(ii) and (d)(ii), and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate in its own right.

(b) If there is a substantial continuity of ownership or management by the successor of the business of the predeces-

sor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. On and after January 1st following the transfer, the successor's array calculation factor rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer.

(c) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025(2) (a) and (b), and 50.29.041, applicable at the time of the acquisition to the predecessor employer who, among the parties to the acquisition, had the largest taxable payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable.

(5) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(6) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate or, beginning January 1, 2005, the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010. [2003 2nd sp.s. c 4 § 18; 1996 c 238 § 1; 1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—1996 c 238: "This act applies to unemployment contribution rates effective on and after January 1, 1996." [1996 c 238 § 2.]

Conflict with federal requirements—1996 c 238: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 238 § 3.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

(2004 Ed.)

50.29.065 Notice of benefits paid and charged to employer's account. Within thirty days after the end of every calendar quarter, the commissioner shall notify each employer of the benefits received during that quarter by each claimant for whom he or she is the base year employer and the amount of those benefits charged to his or her experience rating account. [1984 c 205 § 10.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.070 Notice of employer benefit charges and rate of contribution—Review and appeal. (1) Within a reasonable time after the computation date each employer shall be notified of the employer's rate of contribution as determined for the succeeding rate year and factors used in the calculation. Beginning with rate year 2005, the notice must include the amount of the contribution rate that is attributable to each component of the rate under RCW 50.29.025(2).

(2) Any employer dissatisfied with the benefit charges made to the employer's account for the twelve-month period immediately preceding the computation date or with his or her determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within thirty days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [2003 2nd sp.s. c 4 § 19; 1990 c 245 § 8; 1983 1st ex.s. c 23 § 19; 1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

50.29.080 Redetermination and correction of employer's contribution rate. The commissioner may redetermine any contribution rate if, within three years of the rate computation date he finds that the rate as originally computed was erroneous.

In the event that the redetermined rate is lower than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll for the rate year involved shall be established as a credit against his tax liability; however, if the redetermined rate is higher than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll shall

be assessed against the employer as contributions owing for the rate year involved.

The redetermination of an employer's contribution rate shall not affect the contribution rates which have been established for any other employer nor shall such redetermination affect any other computation made pursuant to this title.

The employer shall have the same rights to request review and redetermination as he had from his original rate determination. [1970 ex.s. c 2 § 17.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Chapter 50.32 RCW

REVIEW, HEARINGS, AND APPEALS

Sections

50.32.010	Appeal tribunals.
50.32.020	Filing of benefit appeals.
50.32.025	Mailed appeal or petition.
50.32.030	Appeal from order and notice of assessment.
50.32.040	Benefit appeal procedure.
50.32.050	Contributions appeal procedure.
50.32.060	Conduct of appeal hearings.
50.32.070	Petition for review by commissioner.
50.32.075	Waiver of time for appeal or petition.
50.32.080	Commissioner's review procedure.
50.32.090	Finality of commissioner's decision.
50.32.095	Commissioner's decisions as precedents—Publication.
50.32.097	Applicability of finding, determination, etc., to other action.
50.32.100	Costs.
50.32.110	Fees for administrative hearings.
50.32.120	Procedure for judicial review.
50.32.130	Undertakings on seeking judicial review.
50.32.140	Interstate petitions to Thurston county.
50.32.150	Jurisdiction of court.
50.32.160	Attorneys' fees.
50.32.170	Decision final by agreement.
50.32.180	Remedies of title exclusive.
50.32.190	Costs, charges, and expenses.

50.32.010 Appeal tribunals. The commissioner shall establish one or more impartial appeal tribunals, each of which shall consist of an administrative law judge appointed under chapter 34.12 RCW who shall decide the issues submitted to the tribunal. No administrative law judge may hear or decide any disputed claim in any case in which he is an interested party. Wherever the term "appeal tribunal" or "the appeal tribunal" is used in this title the same refers to an appeal tribunal established under the provisions of this section. Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this title may be filed with such agency as the commissioner may by regulation prescribe. [1981 c 67 § 30; 1945 c 35 § 117; Rem. Supp. 1945 § 9998-255. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

50.32.020 Filing of benefit appeals. The applicant or claimant, his or her most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within thirty days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his or her last known address: PROVIDED, That in the event an appeal with respect to any determination is pending as of the date when a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. Any appeal from a determination of denial of benefits which is effective for an indefinite period shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determination, or redetermination, within the time allowed by the provisions of this section for appeal

therefrom, said determination, or redetermination, as the case may be, shall be conclusively deemed to be correct except as hereinbefore provided in respect to reconsideration by the commissioner of any determination. [1987 c 61 § 1; 1951 c 215 § 10; 1945 c 35 § 118; Rem. Supp. 1945 § 9998-256. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.32.025 Mailed appeal or petition. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision which is (1) transmitted through the United States mail, shall be deemed filed and received by the addressee on the date shown by the United States postal service cancellation mark stamped by the United States postal service employees upon the envelope or other appropriate wrapper containing it or, (2) mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous or omitted, shall be deemed filed and received on the date it was mailed, if the sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing: PROVIDED, That in the case of a metered cancellation mark by the sender and a United States postal service cancellation mark on the same envelope or other wrapper, the latter shall control: PROVIDED, FURTHER, That in any of the above circumstances, the appeal or petition must be properly addressed and have sufficient postage affixed thereto. [1975 1st ex.s. c 228 § 4; 1969 ex.s. c 200 § 1.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.030 Appeal from order and notice of assessment. When an order and notice of assessment has been served upon or mailed to a delinquent employer, as heretofore provided, such employer may within thirty days thereafter file a petition in writing with the appeal tribunal, stating that such assessment is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the employment security department. If no such petition be filed with the appeal tribunal within thirty days, the assessment shall be conclusively deemed to be just and correct: PROVIDED, That in such cases, and in cases where payment of contributions, interest, or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of a petition on a disputed assessment with the appeal tribunal shall stay the distraint and sale proceeding provided for in this title until a final decision thereon shall have been made, but the filing of such petition shall not affect the right of the commissioner to

perfect a lien, as provided by this title, upon the property of the employer. The filing of a petition on a disputed assessment shall stay the accrual of interest and penalties on the disputed contributions until a final decision shall have been made thereon.

Within thirty days after notice of denial of refund or adjustment has been mailed or delivered (whichever is the earlier) to an employer, the employer may file a petition in writing with the appeal tribunal for a hearing thereon: PROVIDED, That this right shall not apply in those cases in which assessments have been appealed from and have become final. The petitioner shall set forth the reasons why such hearing should be granted and the amount which the petitioner believes should be adjusted or refunded. If no such petition be filed within said thirty days, the determination of the commissioner as stated in said notice shall be final. [1987 c 111 § 6; 1987 c 61 § 2; 1983 1st ex.s. c 23 § 20; 1959 c 266 § 7; 1949 c 214 § 23; 1945 c 35 § 119; Rem. Supp. 1949 § 9998-257.]

Reviser's note: This section was amended by 1987 c 61 § 2 and by 1987 c 111 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.32.040 Benefit appeal procedure. In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(1)(c) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of

this title relating to review by the commissioner. [2003 2nd sp.s. c 4 § 32; 1989 c 175 § 117; 1987 c 61 § 3; 1981 c 35 § 10; 1973 c 73 § 8; 1945 c 35 § 120; Rem. Supp. 1945 § 9998-258. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.32.050 Contributions appeal procedure. In any proceeding before an appeal tribunal involving an appeal from a disputed order and notice of assessment (for contributions, interest, or penalties due) a disputed denial of refund or adjustment (of contributions, interest, or penalties paid) or a disputed experience rating credit, the appeal tribunal, after affording the parties a reasonable opportunity for hearing, shall affirm, modify or set aside the notice of assessment, denial of refund or experience rating credit. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor which shall be deemed to be the final decision on the order and notice of assessment, denial of refund or experience rating credit, as the case may be, unless within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [1987 c 61 § 4; 1983 1st ex.s. c 23 § 21; 1949 c 214 § 24; 1945 c 35 § 121; Rem. Supp. 1949 § 9998-259.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Review by commissioner: RCW 50.32.070.

50.32.060 Conduct of appeal hearings. The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all appeal tribunal proceedings. All testimony at any appeal tribunal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [1945 c 35 § 122; Rem. Supp. 1945 § 9998-260.]

50.32.070 Petition for review by commissioner. Within thirty days from the date of notification or mailing, whichever is the earlier, of any decision of an appeal tribunal, the commissioner on his or her own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within thirty days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may also prevent finality of any decision of an appeal tribunal and

take jurisdiction of the proceedings for his or her review thereof by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional. [1987 c 61 § 5; 1975 1st ex.s. c 228 § 5; 1947 c 215 § 31; 1945 c 35 § 123; Rem. Supp. 1947 § 9998-261.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.075 Waiver of time for appeal or petition. For good cause shown the appeal tribunal or the commissioner may waive the time limitations for administrative appeals or petitions set forth in the provisions of this title. [1975 1st ex.s. c 228 § 16.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.080 Commissioner's review procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering his decision, the commissioner may order the taking of additional evidence by an appeal tribunal to be made a part of the record in the case. Upon the basis of evidence submitted to the appeal tribunal and such additional evidence as the commissioner may order to be taken, the commissioner shall render his decision in writing affirming, modifying, or setting aside the decision of the appeal tribunal. Alternatively, the commissioner may order further proceedings to be held before the appeal tribunal, upon completion of which the appeal tribunal shall issue a decision in writing affirming, modifying, or setting aside its previous decision. The new decision may be appealed under RCW 50.32.070. The commissioner shall mail his decision to the interested parties at their last known addresses. [1982 1st ex.s. c 18 § 8; 1945 c 35 § 124; Rem. Supp. 1945 § 9998-262.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.090 Finality of commissioner's decision. Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in chapter 34.05 RCW, becomes final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [1989 c 175 § 118; 1973 1st ex.s. c 158 § 15; 1945 c 35 § 125; Rem. Supp. 1945 § 9998-263.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Procedure for judicial review: RCW 50.32.120.

50.32.095 Commissioner's decisions as precedents—Publication. The commissioner may designate certain commissioner's decisions as precedents. The commissioner's decisions designated as precedents shall be published and made available to the public by the department. [1982 1st ex.s. c 18 § 9.]

(2004 Ed.)

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.097 Applicability of finding, determination, etc., to other action. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of Title 50 RCW, shall not be conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of Title 50 RCW between an individual and the individual's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts or was reviewed pursuant to RCW 50.32.120. [1988 c 28 § 1.]

50.32.100 Costs. In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: PROVIDED, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe. [1945 c 35 § 126; Rem. Supp. 1945 § 9998-264.]

Costs and attorneys' fees: Chapter 4.84 RCW.

50.32.110 Fees for administrative hearings. No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

50.32.120 Procedure for judicial review. Judicial review of a decision of the commissioner involving the review of an appeals tribunal decision may be had only in accordance with the procedural requirements of RCW 34.05.570. [1973 1st ex.s. c 158 § 16; 1971 c 81 § 119; 1945 c 35 § 128; Rem. Supp. 1945 § 9998-266. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Appeals: Chapter 4.88 RCW.

50.32.130 Undertakings on seeking judicial review. No bond of any kind shall be required of any individual seek-

ing judicial review from a commissioner's decision affecting such individual's application for initial determination or claim for waiting period credit or for benefits.

No commissioner's decision shall be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount theretofore deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court: PROVIDED, HOWEVER, That this section shall not be deemed to authorize a stay in the payment of benefits to an individual when such individual has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal. [1973 1st ex.s. c 158 § 17; 1971 c 81 § 120; 1945 c 35 § 129; Rem. Supp. 1945 § 9998-267. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Rules of court: *Cf. Title 8 RAP, RAP 18.22.*

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.140 Interstate petitions to Thurston county. RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals. [1989 c 175 § 119; 1973 1st ex.s. c 158 § 18; 1945 c 35 § 130; Rem. Supp. 1945 § 9998-268.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.150 Jurisdiction of court. In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court. [1945 c 35 § 131; Rem. Supp. 1945 § 9998-269. Prior: 1941 c 253 § 4.]

Judgments

entry of: Chapter 4.64 RCW.

generally: Chapter 4.56 RCW.

50.32.160 Attorneys' fees. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for

benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply. [1988 c 202 § 48; 1971 c 81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998-270. Prior: 1941 c 253 § 4.]

Severability—1988 c 202: See note following RCW 2.24.050.

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW.

50.32.170 Decision final by agreement. No appeal from the decision of an appeal tribunal, or of the commissioner, or of any court in any proceedings provided by this title may be taken subsequent to the filing with the appeal tribunal, commissioner, or court which rendered the decision, within the time allowed for appeal, of an agreement in writing approved by all interested parties to the proceedings, providing that no appeal will be taken from such decision. The provisions of this section shall be jurisdictional. [1945 c 35 § 133; Rem. Supp. 1945 § 9998-271.]

50.32.180 Remedies of title exclusive. The remedies provided in this title for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this title. Matters which may be determined by the procedures set out in this title shall not be the subject of any declaratory judgment. [1945 c 35 § 134; Rem. Supp. 1945 § 9998-272.]

50.32.190 Costs, charges, and expenses. Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred therein by said commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the unemployment compensation administration fund.

Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under the unemployment compensation act by the clerk of any court. [1945 c 35 § 135; Rem. Supp. 1945 § 9998-273.]

Chapter 50.36 RCW

PENALTIES

Sections

50.36.010	Violations generally.
50.36.020	Violations by employers.
50.36.030	Concealing cause of discharge.

50.36.010 Violations generally. (1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [2003 c 53 § 279; 1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

50.36.020 Violations by employers. (1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prose-

(2004 Ed.)

cution as prescribed herein for a person. [2003 c 53 § 280; 1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem. Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Crimes and punishment: Titles 9, 9A RCW.

50.36.030 Concealing cause of discharge. Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days. [1951 c 265 § 13.]

Severability—1951 c 265: See note following RCW 50.98.070.

Chapter 50.38 RCW

LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

(Formerly: Occupational information service—Forecast)

Sections

50.38.010	Intent.
50.38.015	Definitions.
50.38.020	Occupational information responsibility—Forecast, criteria.
50.38.030	Occupational forecast—Agency consultation.
50.38.040	Annual report.
50.38.050	Department—Duties.
50.38.060	Department—Powers.
50.38.065	Moneys for nonfunded labor market information costs—Disposition.
50.38.900	Effective date—1982 c 43.
50.38.901	Conflict with federal requirements—1993 c 62.
50.38.902	Effective date—1993 c 62.

50.38.010 Intent. It is the intent of this chapter to establish the duties and authority of the employment security department relating to labor market information and economic analysis. State and federal law mandate the use of labor market information in the planning, coordinating, management, implementation, and evaluation of certain programs. Often this labor market information is also needed in studies for the legislature and state programs, like those dealing with growth management, community diversification, export assistance, prison industries, energy, agriculture, social services, and environment. Employment, training, education, job creation, and other programs are often mandated without adequate federal or state funding for the needed labor market information. Clarification of the department's duties and authority will assist users of state and local labor market information products and services to have realistic expectations and provide the department authority to recover actual costs for labor market information products and services developed in response to individual requests. [1993 c 62 § 1; 1982 c 43 § 1.]

50.38.015 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Labor market information" means the body of information generated from measurement and evaluation of the socioeconomic factors and variables influencing the employment process in the state and specific labor market areas. These socioeconomic factors and variables affect labor demand and supply relationships and include:

(a) Labor force information, which includes but is not limited to employment, unemployment, labor force participation, labor turnover and mobility, average hours and earnings, and changes and characteristics of the population and labor force within specific labor market areas and the state;

(b) Occupational information, which includes but is not limited to occupational supply and demand estimates and projections, characteristics of occupations, wage levels, job duties, training and education requirements, conditions of

employment, unionization, retirement practices, and training opportunities;

(c) Economic information, which includes but is not limited to number of business starts and stops by industry and labor market area, information on employment growth and decline by industry and labor market area, employer establishment data, and number of labor-management disputes by industry and labor market area; and

(d) Program information, which includes but is not limited to program participant or student information gathered in cooperation with other state and local agencies along with related labor market information to evaluate the effectiveness, efficiency, and impact of state and local employment, training, education, and job creation efforts in support of planning, management, implementation, and evaluation.

(2) "Labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the bureau of labor statistics of the department of labor in defining such areas or similar criteria established by the governor. The area generally takes the name of its community. The boundaries depend primarily on economic and geographic factors. Washington state is divided into labor market areas, which usually include a county or a group of contiguous counties.

(3) "Labor market analysis" means the measurement and evaluation of economic forces as they relate to the employment process in the local labor market area. Variables affecting labor market relationships include, but are not limited to, such factors as labor force changes and characteristics, population changes and characteristics, industrial structure and development, technological developments, shifts in consumer demand, volume and extent of unionization and trade disputes, recruitment practices, wage levels, conditions of employment, and training opportunities.

(4) "Public records" has the same meaning as set forth in RCW 42.17.020.

(5) "Department" means the employment security department. [1993 c 62 § 2.]

50.38.020 Occupational information responsibility—Forecast, criteria. The Washington state employment security department shall be the responsible state entity for the development, administration, and dissemination of Washington state occupational information, including the state occupational forecast. The generation of the forecast is subject to the following criteria:

(1) The occupational forecast shall be consistent with the state economic forecast;

(2) Standardized occupational classification codes shall be adopted, to be cross-referenced with other generally accepted occupational codes. [1982 c 43 § 2.]

50.38.030 Occupational forecast—Agency consultation. The employment security department shall consult with the following agencies prior to the issuance of the state occupational forecast:

- (1) Office of financial management;
- (2) Department of community, trade, and economic development;
- (3) Department of labor and industries;
- (4) State board for community and technical colleges;
- (5) Superintendent of public instruction;
- (6) Department of social and health services;
- (7) Work force training and education coordinating board; and
- (8) Other state and local agencies as deemed appropriate by the commissioner of the employment security department.

These agencies shall cooperate with the employment security department, submitting information relevant to the generation of occupational forecasts. [1995 c 399 § 142; 1993 c 62 § 3; 1985 c 466 § 66; 1985 c 6 § 18; 1982 c 43 § 3.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

50.38.040 Annual report. The department shall submit an annual report to the legislature and the governor that includes, but is not limited to:

- (1) Identification and analysis of industries in the United States, Washington state, and local labor markets with high levels of seasonal, cyclical, and structural unemployment;
- (2) The industries and local labor markets with plant closures and mass lay-offs and the number of affected workers;
- (3) An analysis of the major causes of plant closures and mass lay-offs;
- (4) The number of dislocated workers and persons who have exhausted their unemployment benefits, classified by industry, occupation, and local labor markets;
- (5) The experience of the unemployed in their efforts to become reemployed. This should include research conducted on the continuous wage and benefit history;
- (6) Five-year industry and occupational employment projections; and
- (7) Annual and hourly average wage rates by industry and occupation. [1993 c 62 § 4.]

50.38.050 Department—Duties. The department shall have the following duties:

- (1) Oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;
- (2) Produce local labor market information packages for the state's counties, including special studies and job impact analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(2004 Ed.)

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts; and

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts. [1993 c 62 § 5.]

50.38.060 Department—Powers. To implement this chapter, the department has authority to:

(1) Establish mechanisms to recover actual costs incurred in producing and providing otherwise nonfunded labor market information.

(a) If the commissioner, in his or her discretion, determines that providing labor market information is in the public interest, the requested information may be provided at reduced costs.

(b) The department shall provide access to labor market information products that constitute public records available for public inspection and copying under chapter 42.17 RCW, at fees not exceeding those allowed under RCW 42.17.300 and consistent with the department's fee schedule;

(2) Receive federal set aside funds from several federal programs that are authorized to fund state and local labor market information and are required to use such information in support of their programs;

(3) Enter into agreements with other public agencies for statistical analysis, research, or evaluation studies of local, state, and federally funded employment, training, education, and job creation programs to increase the efficiency or quality of service provided to the public consistent with chapter 50.13 RCW;

(4) Coordinate with other state agencies to study ways to standardize federal and state multi-agency administrative records, such as unemployment insurance information and other information to produce employment, training, education, and economic analysis needed to improve labor market information products and services; and

(5) Produce agricultural labor market information and economic analysis needed to facilitate the efficient and effective matching of the local supply and demand of agricultural labor critical to an effective agricultural labor exchange in Washington state. Information collected for an agricultural labor market information effort will be coordinated with other federal, state, and local statistical agencies to minimize reporting burden through cooperative data collection efforts for statistical analysis, research, or studies. [1993 c 62 § 6.]

50.38.065 Moneys for nonfunded labor market information costs—Disposition. Moneys received under RCW 50.38.060(1) to cover the actual costs of nonfunded labor market information shall be deposited in the unemployment compensation administration fund and expenditures shall be authorized only by appropriation. [1993 c 62 § 7.]

50.38.900 Effective date—1982 c 43. This act shall take effect July 1, 1982. [1982 c 43 § 5.]

50.38.901 Conflict with federal requirements—1993 c 62. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1993 c 62 § 10.]

50.38.902 Effective date—1993 c 62. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 62 § 13.]

Chapter 50.40 RCW

MISCELLANEOUS PROVISIONS

Sections

50.40.010	Waiver of rights void.
50.40.020	Exemption of benefits.
50.40.040	No vested rights.
50.40.050	Child support obligations.
50.40.065	"Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules.
50.40.066	Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account.

50.40.010 Waiver of rights void. (1) Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this title shall be void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void.

(3) No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ.

(4) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 281; 1945 c 35 § 182; Rem. Supp. 1945 § 9998-321. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

50.40.020 Exemption of benefits. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as provided in RCW 50.40.050. Benefits received by any individual, so long as they are not commingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. [1982 1st ex.s. c 18 § 10. Prior: 1982 c 201 § 7; 1945 c 35 § 183; Rem. Supp. 1945 § 9998-322; prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15. Formerly codified in RCW 50.40.020, part and 50.40.030, part.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.040 No vested rights. The legislature reserves the right to amend or repeal all or any part of this title at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges,

(2004 Ed.)

or immunities conferred by this title or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this title at any time. [1945 c 35 § 187; no RRS. Prior: 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.40.050 Child support obligations. (1) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under subsection (7) of this section. If the individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the state or local child support enforcement agency enforcing those obligations that the individual has been determined to be eligible for unemployment compensation.

(2) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations as defined under subsection (7) of this section:

(a) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither (b) nor (c) of this subsection is applicable;

(b) The amount (if any) determined pursuant to an agreement submitted to the commissioner under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless (c) of this subsection is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

(3) Any amount deducted and withheld under subsection (2) of this section shall be paid by the commissioner to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) of this section shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by that individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For the purposes of this section, "unemployment compensation" means any compensation payable under this chapter including amounts payable by the commissioner under an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) "Child support obligations" as used in this section means only those obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under part D of Title IV of the Social Security Act.

(8) "State or local child support enforcement agency" as used in this section means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection (7) of this section. [1982 1st ex.s. c 18 § 11. Prior: 1982 c 201 § 3.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (Expires December 31, 2007.) (1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and RCW 43.19.531, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by the governor's committee on disability issues and employment; (g) one member who is designated by the secretary of the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and RCW 43.19.531, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have

been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings;

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to develop and adopt rules establishing the measurement at which it is deemed that the measurement categories identified in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, 2007. [2003 c 136 § 7.]

50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (Expires December 31, 2007.)

(1) The commissioner is authorized to adopt rules to implement RCW 50.40.065, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b) a fee of not more than two percent of the face amount of any contract awarded under chapter 136, Laws of 2003; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover

costs incurred by the department of general administration in fulfilling the duties identified in RCW 43.19.531 and the governor's committee on disability issues and employment in fulfilling the duties identified in RCW 50.40.065.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, 2007, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund. [2003 c 136 § 8.]

Chapter 50.44 RCW

SPECIAL COVERAGE PROVISIONS

Sections

50.44.010	Religious, charitable, educational, or other nonprofit organizations—Exemption—Payments.
50.44.020	Instrumentalities of this state, other states, political subdivisions.
50.44.030	Political subdivisions, instrumentalities of this state and other state.
50.44.035	Local government tax.
50.44.037	"Institution of higher education" defined.
50.44.040	Services excluded under "employment" for certain purposes.
50.44.050	Benefits payable, terms and conditions—"Academic year" defined.
50.44.053	"Reasonable assurance" defined—Presumption, employees of educational institutions.
50.44.055	Finding—Intent—Reasonable assurance, application to employees of educational institutions.
50.44.060	Nonprofit organization employees—Financing of benefits—Election of payments in lieu of contributions.
50.44.070	Election to make payments in lieu of contributions—Bond or deposit.
50.44.080	Construction—Compliance with federal unemployment tax act, department of labor guidelines.
50.44.090	Construction—Mandatory coverage of employees of political subdivision under 1977 ex.s. c 292.

Coverage of corporate officers: RCW 50.04.165.

50.44.010 Religious, charitable, educational, or other nonprofit organizations—Exemption—Payments. Services performed subsequent to December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act shall be deemed services performed in employment unless such service is exempted under RCW 50.44.040.

Such organization shall make payments to the unemployment compensation fund based on such services in accordance with the provisions of RCW 50.44.060. [1971 c 3 § 18.]

50.44.020 Instrumentalities of this state, other states, political subdivisions. Commencing with benefit years beginning on or after January 28, 1971, services performed subsequent to September 30, 1969 in the employ of this state or any of its wholly owned instrumentalities or jointly owned instrumentalities of this state and another state or this state and one or more of its political subdivisions shall be deemed services in employment unless such services are excluded from the term employment by RCW 50.44.040.

The state shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (2) and (3) of RCW 50.44.060: PROVIDED, HOWEVER, That for weeks of unemployment beginning after January 1, 1979, the state shall pay in addition to the full amount of regular and additional benefits so attributable the full amount of extended benefits so attributable: PROVIDED, FURTHER, That no payment will be required from the state until the expiration of the twelve-month period following the

end of the biennium in which the benefits attributable to such employment were paid. The amount of this payment shall include an amount equal to the amount of interest that would have been realized for the benefit of the unemployment compensation trust fund had such payments been received within thirty days after the day of the quarterly billing provided for in RCW 50.44.060(2)(a). [1977 ex.s. c 292 § 13; 1971 c 3 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.030 Political subdivisions, instrumentalities of this state and other state. (1) All services performed for any political subdivision or instrumentality of one or more political subdivisions of this state or one or more political subdivisions of this state and any other state after December 31, 1977, will be deemed to be services in employment to the extent coverage is not exempted under RCW 50.44.040.

(2) All such units of government shall file, before December 15, 1977, a written registration with the commissioner of the employment security department. Such registration shall specify the manner in which the unit of government will finance the payment of benefits. The elections available to counties, cities and towns are the local government tax, provided for in RCW 50.44.035, or payment in lieu of contributions, as described in RCW 50.44.060. The elections available to other units of government are the contributions plan in chapters 50.24 and 50.29 RCW, or payments in lieu of contributions, described in RCW 50.44.060. Under any election the governmental unit will be charged the full amount of regular, additional, and extended benefits attributable to its account.

(3) A unit of government may switch from its current method of financing the payment of benefits by electing any other method which it would be authorized to select pursuant to the terms of subsection (2) of this section. Notification of such election must be filed with the commissioner no less than thirty days prior to the taxable year for which the new method of financing the payment of benefits is to be effective. An election under this section shall remain in effect for no less than two taxable years.

(4) Any political subdivision or instrumentality of more than one political subdivision of this state is hereby authorized to enter into agreements with other political subdivisions or instrumentalities of more than one political subdivision of this state to form pool accounts for the purpose of making payments in lieu of contributions. These accounts shall be formed and administered in accordance with applicable regulations. The formation of such accounts shall not relieve the governmental unit of the responsibility for making required payments in the event that the pool account does not make the payments. [1981 c 35 § 11; 1977 ex.s. c 292 § 14; 1972 ex.s. c 35 § 2; 1971 c 3 § 20.]

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.035 Local government tax. (1) Any county, city, or town not electing to make payments in lieu of contributions shall pay a "local government tax." Taxes paid under this section shall be paid into an administratively identifiable account in the unemployment compensation fund. This account shall be self-sustaining. For calendar years 1978 and 1979 all such employers shall pay local government tax at the rate of one and one-quarter percent of all remuneration paid by the governmental unit for services in its employment. For each year after 1979 each such employer's rate of tax shall be determined in accordance with this section: PROVIDED, HOWEVER, That whenever it appears to the commissioner that the anticipated benefit payments from the account would jeopardize reasonable reserves in this identifiable account the commissioner may at the commencement of any calendar quarter, impose an emergency excess tax of not more than one percent of remuneration paid by the participating governmental units which "excess tax" shall be paid in addition to the applicable rate computed pursuant to this section until the calendar year following the next September 1st.

(2) A reserve account shall be established for each such employer.

(a) The "reserve account" of each such employer shall be credited with tax amounts paid and shall be charged with benefit amounts charged in accordance with the formula set forth in RCW 50.44.060 as now or hereafter amended except that such employer's account shall be charged for the full amount of extended benefits so attributable for weeks of unemployment commencing after January 1, 1979. Such credits and charges shall be cumulative from January 1, 1978.

(b) After the cutoff date, the "reserve ratio" of each such employer shall be computed by dividing its reserve account balance as of the computation date by the total remuneration paid during the preceding calendar year for services in its employment. This division shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(3) A "benefit cost ratio" for each such employer shall be computed by dividing its total benefit charges during the thirty-six months ending on June 30th by its total remuneration during the three preceding calendar years: PROVIDED, That after August 31st in 1979 each employer's total benefit charges for the twelve months ending on June 30th shall be divided by its total remuneration paid in the last three quarters of calendar year 1978; and after August 31st in 1980 each employer's total benefit charges for the twenty-four months ending June 30th shall be divided by its total remuneration paid in the last three calendar quarters of 1978 and the four calendar quarters of 1979. Such computations shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(4) For each such employer its benefit cost ratio shall be subtracted from its reserve ratio. One-third of the resulting amount shall be subtracted from its benefit cost ratio. The resulting figure, expressed as a percentage and rounded to the nearest tenth of one percent, shall become its local government tax rate for the following rate year. For the rate year 1980 no tax rate shall be less than 0.6 percent nor more than 2.2 percent. For 1981 no tax rate shall be less than 0.4 percent

(2004 Ed.)

nor more than 2.6 percent. For years after 1981 no tax rate shall be less than 0.2 percent or more than 3.0 percent. No individual rate shall be increased any more than 1.0 percent from one rate year to the next.

(5) Any county, city, or town electing participation under this section at any time after December 15, 1977, shall be assigned a tax rate of one and one-quarter percent of total remuneration for the first eight quarters of the participation.

(6) "Local government tax" shall be deemed to be "contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title and the rules enacted pursuant thereto dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil, and criminal sanctions. [1998 c 245 § 100; 1983 1st ex.s. c 23 § 22; 1977 ex.s. c 292 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.037 "Institution of higher education" defined.

For the purposes of this chapter, the term "institution of higher education" means an educational institution in this state which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing subsections, all colleges and universities in this state are "institutions of higher education". [1977 ex.s. c 292 § 16.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.040 Services excluded under "employment" for certain purposes. The term "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030 shall not include service performed:

(1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) Before January 1, 1978, in the employ of a nongovernmental educational institution, approved or accredited by the state board of education, which is not an "institution of higher education"; or

(4) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(6) For a custodial or penal institution by an inmate of the custodial or penal institution; or

(7) In the employ of a hospital, if such service is performed by a patient of such hospital; or

(8) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or

(9) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employee, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(10) Before January 1, 1978, in the employ of the state or one of its instrumentalities or a political subdivision or one of its instrumentalities by an individual who is (a) occupying an elective office, or (b) who is compensated solely on a fee or per diem basis; or

(11) Before January 1, 1978, in the employ of the legislature of the state of Washington by an individual who is compensated pursuant to an agreement which provides for a guaranteed rate of compensation for irregular hours worked; or

(12) In the employ of a nongovernmental preschool which is devoted exclusively to the area of child development training of preschool age children through an established curriculum of formal classroom or laboratory instruction which did not employ four or more individuals on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week; or

(13) After December 31, 1977, in the employ of the state or any of its instrumentalities or political subdivisions of this state in any of its instrumentalities by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of the national guard or air national guard; or

(c) In a policymaking position the performance of the duties of which ordinarily do not require more than eight hours per week. [1977 ex.s. c 292 § 17; 1975 1st ex.s. c 67 § 1; 1975 c 4 § 1; 1973 c 73 § 9; 1971 c 3 § 21.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Exemption from unemployment compensation coverage conservation corps members: RCW 43.220.170.

Washington service corps enrollees: RCW 50.65.120.

50.44.050 Benefits payable, terms and conditions—
"Academic year" defined. Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on any and all service in an instructional, research, or principal administrative capacity for any and all educational institutions shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on any and all services in any other capacity for any and all educational institutions for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services for any educational institution in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services for any educa-

tional institution in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in any educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in this section, "academic year" means: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution. [2001 c 100 § 2; 1998 c 233 § 2; 1995 c 296 § 2; 1990 c 33 § 587; 1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 288 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

Intent—Findings—2001 c 100: "It is the intent of the legislature to clarify requirements related to the use of base year hours and wages for certain employees at educational institutions, for the purpose of determining eligibility for unemployment insurance benefits.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which poses a significant economic risk to the state's private employers, the state's general fund, and to the administration of the state's unemployment insurance system. It is the intent of the legislature to change Washington's unemployment law only to the extent necessary to ensure it conforms with federal law governing the use of base year hours and wages earned at educational institutions.

The legislature finds that the United States department of labor rely on state law and its application as interpreted in state court decisions, especially *Pechman v. Employment Security*, to determine if Washington state law conforms to federal guidelines in this area. Therefore, it is the intent of the legislature to clearly communicate to the courts that the purpose for the section 2, chapter 100, Laws of 2001 amendment to RCW 50.44.050 is to interpret state law in a manner that conforms to federal guidelines.

The legislature finds that federal law requires that school hours and wages in the base year must be restricted from use to establish eligibility for an unemployment compensation claim for employees of educational institutions during specified times. Further, federal law specifies that when required to restrict base year school hours and wages, it must be any and all hours and wages from any and all educational institutions, not just the hours and wages from institutions where there is a reasonable assurance of returning to work following a customary nonwork period. Therefore, it is the intent of the legislature to restrict hours worked and wages earned as required by federal law.

Customary nonwork periods for educational institutions include:

- (1) The period between two successive academic years;
- (2) The period between two successive academic terms within an academic year;
- (3) A similar period between two regular but not successive terms within an academic year; or
- (4) An established and customary vacation period or holiday recess.

Restricted use of base year hours and wages from educational institutions shall occur only in the circumstances described in RCW 50.44.050 (as amended by chapter 100, Laws of 2001) and in RCW 50.44.053, and as further defined in rules promulgated by the employment security department." [2001 c 100 § 1.]

Conflict with federal requirements—2001 c 100: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 100 § 3.]

(2004 Ed.)

Effective date—2001 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 100 § 4.]

Intent—Findings—1998 c 233: "It is the intent of the legislature to clarify requirements related to unemployment compensation for employees at educational institutions.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which finding poses a significant economic risk to the state's private employers and to the administration of the state's unemployment insurance system. It is the intent of the legislature, by the 1998, chapter 233 amendments to RCW 50.44.050 and 50.44.053, to bring Washington's unemployment compensation law into conformity with federal law in these areas of concern.

The legislature finds that some instructional staff at the state's educational institutions receive an appointment of employment for an indefinite period while others may face circumstances that do not provide a reasonable expectation of employment during an ensuing academic year or term.

Therefore, it is the intent of the legislature that the employment security department continue to make determinations of educational employees' eligibility for unemployment compensation for the period between academic years or terms based on a finding of reasonable assurance that the employee will have employment for the ensuing academic year or term and that the determination in each employee's case is made on an individual basis, consistent with federal guidelines. This determination must take into consideration contingencies that may exist in fact in an individual case. The 1998, chapter 233 amendment to RCW 50.44.053 is not intended to change the practice used by the employment security department when determining reasonable assurance. If, during fact-finding, there is a disagreement about whether an individual has reasonable assurance, the educational institution must provide documentation that reasonable assurance exists for that individual." [1998 c 233 § 1.]

Conflict with federal requirements—1998 c 233: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1998 c 233 § 5.]

Effective date—1998 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1998]." [1998 c 233 § 6.]

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—Applicability—1984 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.053 "Reasonable assurance" defined—Presumption, employees of educational institutions. (1) The term "reasonable assurance," as used in RCW 50.44.050,

means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

(2) An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

(3) In the case of community and technical colleges assigned the standard industrial classification code 8222 or the North American industry classification system code 611210 for services performed in a principal administrative, research, or instructional capacity, a person is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. It is the college's burden to provide sufficient documentation to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes. [2001 c 99 § 2; 1998 c 233 § 3; 1995 c 296 § 3; 1985 ex.s. c 5 § 9.]

Conflict with federal requirements—2001 c 99: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 99 § 4.]

Severability—2001 c 99: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 99 § 5.]

Applicability—2001 c 99: "This act applies to weeks that begin after March 31, 2001." [2001 c 99 § 6.]

Effective date—2001 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 99 § 7.]

Intent—Findings—Conflict with federal requirements—Effective date—1998 c 233: See notes following RCW 50.44.050.

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.44.055 Finding—Intent—Reasonable assurance, application to employees of educational institutions. The legislature finds the interests of the state and its citizens are best served by a strong community and technical college system. As described by their establishing legislation, these two-year institutions are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher education. Paramount to that system's success is the attraction and retention of qualified instructors. In order to

attract and retain instructors, those who are subject to uncertainties of employment must be provided assurance their economic needs are addressed. Over time, a change in hiring patterns has occurred, and for the last decade a substantial portion of community and technical college faculty are hired on a contingent, as needed, basis. That contingent nature distinguishes them from the more stable, majority employment found in the common school system and in the other institutions of higher education. Contingent assurances of future employment are often speculative and do not rise to the level of other forms of assurance. As such, assurances conditioned on forecast enrollment, funding, or program decisions are typically not reasonable assurances of employment.

It is the intent of the legislature that reasonable assurance continue to apply to all employees of educational institutions as required by federal provisions and RCW 50.44.080. [2001 c 99 § 1.]

Conflict with federal requirements—Severability—Applicability—Effective date—2001 c 99: See notes following RCW 50.44.053.

50.44.060 Nonprofit organization employees—Financing of benefits—Election of payments in lieu of contributions. Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972 shall pay contributions under the provisions of RCW 50.24.010 and chapter 50.29 RCW, unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment that are based upon wages paid or payable during the effective period of such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which becomes subject to this title after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with paragraph (a) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such

election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(e) The commissioner, in accordance with such regulations as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either paragraph (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) The percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(B) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-

half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (c). If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under paragraph (a) or (b) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining unpaid shall bear interest and penalties from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.12.220 and 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraphs (a) and (b) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers. [1990 c 245 § 9; 1983 1st ex.s. c 23 § 24; 1977 ex.s. c 292 § 19; 1971 c 3 § 23.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.070 Election to make payments in lieu of contributions—Bond or deposit. In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election, to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

(1) The amount of the bond or deposit required by this subsection shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect but in no event shall such amount be in excess of the amount which said employer would pay for such year if he were subject to the contribution provisions of this title. The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent.

(2) Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commissioner, at such times as the commissioner may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commissioner shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in this title, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money or securities in accordance with this section shall be retained by the commissioner in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commissioner may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in this act. The commissioner shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commissioner may, at any time review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary he shall require the organization to make an additional deposit within thirty days of written notice of his determination or shall

return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(4) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the commissioner may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which termination becomes effective: PROVIDED, That the commissioner may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days. [1973 c 73 § 11; 1971 c 3 § 24.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.080 Construction—Compliance with federal unemployment tax act, department of labor guidelines. In view of the importance of compliance of this chapter with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Department of labor guidelines implementing chapter 99, Laws of 2001 should be referred to when interpreting the provisions of this chapter.

Language in this chapter concerning the extension of coverage to employers entitled to make payments in lieu of contributions should, in a manner consistent with the foregoing paragraph, be construed so as to have a minimum financial impact on the employers subject to the experience rating provisions of this title. [2001 c 99 § 3; 1971 c 3 § 25.]

Conflict with federal requirements—Severability—Applicability—Effective date—2001 c 99: See notes following RCW 50.44.053.

50.44.090 Construction—Mandatory coverage of employees of political subdivision under 1977 ex.s. c 292.

(1) The provisions of chapter 292, Laws of 1977 ex. sess. mandating coverage of employees of political subdivisions have been enacted to comply with the provisions of Public Law 94-566. Therefore, as provided in subsection (2), this mandatory feature shall be contingent on the existence of valid and constitutional federal law requiring the Secretary of Labor to refuse to certify as approved the employment security laws of this state if such laws did not continue such mandatory coverage.

(2) In the event the mandatory coverage feature for political subdivisions ceases to be necessary for compliance with valid and constitutional federal law, then the mandatory feature of chapter 292, Laws of 1977 ex. sess. shall cease to be effective as of the end of the next quarter following the quarter in which the mandatory feature contained in chapter 292, Laws of 1977 ex. sess. is not necessary for such compliance.

(3) In the event mandatory coverage ceases to be effective pursuant to subsection (2), then the sections, or subsections as the case may be, of chapter 292, Laws of 1977 ex. sess. shall to the extent that they apply to coverage of employees of political subdivisions be deemed nullified and the language of the sections being amended shall be deemed reinstated as the laws of this state.

(4) Benefits paid based on the services covered during the effective life of the mandatory coverage feature shall be financed as follows:

(a) If the political subdivision was financing payment of benefits on a reimbursable basis, benefits attributable to employment with the political subdivision shall be assessed to and paid by the political subdivision;

(b) If the political subdivision is a county, city, or town which elected financing pursuant to RCW 50.44.035, such political subdivision will pay "the local government tax" for all earnings by employees through the end of the calendar quarter in which the mandatory coverage is no longer effective pursuant to subsection (2);

(c) If the political subdivision was financing benefits by the contribution method it will pay contributions on wages earned by its employees through the end of the calendar quarter in which mandatory coverage is no longer effective pursuant to subsection (2). [1977 ex.s. c 292 § 23.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Chapter 50.50 RCW

INDIAN TRIBES

Sections

50.50.010	Employment.
50.50.020	Benefits—Generally.
50.50.030	Contributions—Election of payments in lieu of contributions.
50.50.040	Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices.
50.50.050	Notices—Contents.
50.50.060	Extended benefits—Financing by Indian tribe.
50.50.070	Indian tribes subject to same terms and conditions as other employers.
50.50.900	Conflict with federal requirements—2001 1st sp.s. c 11.
50.50.901	Severability—2001 1st sp.s. c 11.
50.50.902	Effective date—2001 1st sp.s. c 11.
50.50.903	Retroactive application—2001 1st sp.s. c 11.

50.50.010 Employment. The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the federal unemployment tax act, provided such service is excluded from "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(7), the federal unemployment tax act, and is not otherwise excluded from "employment" under this title. For purposes of this section, the exclusions from employment in RCW 50.44.040, except RCW 50.44.040(12) addressing nongovernmental preschools, are applicable to services performed in the employ of an Indian tribe. [2001 1st sp.s. c 11 § 3.]

50.50.020 Benefits—Generally. Benefits based on service in employment defined in this chapter are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service under this title. [2001 1st sp.s. c 11 § 4.]

50.50.030 Contributions—Election of payments in lieu of contributions. (1) Indian tribes or tribal units, including subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to this title shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the unemployment compensation fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in RCW 50.44.030 pertaining to other units of government subject to this title. Indian tribes shall determine if reimbursement for benefits paid are to be elected by the tribe as a whole, by individual tribal units, or by combinations of tribal units.

(3) Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(4) At the discretion of the commissioner and on the same basis as other employers with the same election option, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions is required, within thirty days after the effective date of its election, to: (a) Execute and file with the commissioner a surety bond approved by the commissioner; or (b) deposit with the commissioner money or securities in an amount determined by the commissioner. [2001 1st sp.s. c 11 § 5.]

50.50.040 Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices. (1)(a) The commissioner shall revoke the option for an Indian tribe or tribal unit to make payments in lieu of contributions as described in RCW 50.50.030 if the Indian tribe or tribal unit: (i) Did not make payments, including assessments of interest and penalties, required under this chapter within ninety days of receipt of statement; or (ii) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the cutoff date, as authorized in chapter 50.29 RCW. The revocation shall begin on January 1 of the first calendar year after the Indian tribe or tribal unit meets these conditions, and shall continue until the option is reinstated as described in (b) of this subsection.

(b) The commissioner shall reinstate the option if, as of the cutoff date, an Indian tribe or tribal unit whose option was revoked as described in (a) of this subsection: (i) Paid contributions owed in the current calendar year when due; and (ii) made required payments, including assessments of interest and penalties, for any preceding calendar years. The reinstatement shall begin on January 1 of the first calendar year after the Indian tribe or tribal unit satisfies these conditions.

(2)(a) Services performed for an Indian tribe or tribal unit are not services in "employment" for purposes of RCW 50.04.265 and 50.50.010 if:

(i) The Indian tribe or tribal unit elected to make payments in lieu of contributions, had the option revoked, and has not met the conditions for reinstatement of the option; and

(ii) The Indian tribe or tribal unit either: (A) Did not make required payments, including assessments of interest and penalties, within one hundred eighty days of receipt of statement; or (B) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the last day of the current calendar quarter.

This revocation of coverage shall begin on the first day of the first calendar quarter after the Indian tribe or tribal unit meets these conditions, and shall continue until coverage is reinstated as described in (c) of this subsection.

(b) Services performed for an Indian tribe or tribal unit are not services in "employment" for purposes of RCW 50.04.265 and 50.50.010 if:

(i) The Indian tribe or tribal unit is a contribution-paying employer; and

(ii) The Indian tribe or tribal unit either: (A) Did not make required payments, including assessments of interest and penalties, within one hundred eighty days of receipt of statement; or (B) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the last day of the current calendar quarter.

This revocation of coverage shall begin on the first day of the first calendar quarter after the Indian tribe or tribal unit meets these conditions, and shall continue until coverage is reinstated as described in (c) of this subsection.

(c) The commissioner may reinstate coverage if the Indian tribe or tribal unit has made required payments, including assessments of interest and penalties. This reinstatement of coverage may begin on the first day of the first calendar quarter after these payments are made.

(3)(a) The commissioner shall immediately notify the United States internal revenue service and the United States department of labor if an Indian tribe or tribal unit does not make required payments, including assessments of interest and penalties, within ninety days of receipt of statement.

(b) The commissioner shall immediately notify the United States internal revenue service and the United States department of labor of any revocation or reinstatement of the option to make payments in lieu of contributions under subsection (1) of this section or any revocation or reinstatement of coverage under subsection (2) of this section. [2001 1st sp.s. c 11 § 6.]

50.50.050 Notices—Contents. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed time frames: (1) Causes the Indian tribe to be liable for taxes under the federal unemployment tax act; (2) causes the Indian tribe to lose the option to make payments in lieu of contributions; and (3) causes the Indian tribe to be excepted from the definition of "employing unit," as provided in RCW 50.04.090, and services in the employ of the Indian tribe, as provided in RCW 50.04.265 and 50.50.010, to be excepted from "employment." [2001 1st sp.s. c 11 § 7.]

50.50.060 Extended benefits—Financing by Indian tribe. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government must be financed in their entirety by such Indian tribe. [2001 1st sp.s. c 11 § 8.]

50.50.070 Indian tribes subject to same terms and conditions as other employers. Unless specifically addressed in this chapter, Indian tribes or their tribal units are subject to the same terms and conditions as are other employers subject to contributions under RCW 50.29.020 or other units of government under RCW 50.44.030 that make payments in lieu of contributions. [2001 1st sp.s. c 11 § 9.]

50.50.900 Conflict with federal requirements—2001 1st sp.s. c 11. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to

the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [2001 1st sp.s. c 11 § 10.]

50.50.901 Severability—2001 1st sp.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 1st sp.s. c 11 § 11.]

50.50.902 Effective date—2001 1st sp.s. c 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 11, 2001]. [2001 1st sp.s. c 11 § 12.]

50.50.903 Retroactive application—2001 1st sp.s. c 11. This act applies retroactively to services performed on or after December 21, 2000. Indian tribes or tribal units may elect to make payments in lieu of contributions effective December 21, 2000, or a subsequent date. [2001 1st sp.s. c 11 § 13.]

Chapter 50.60 RCW

SHARED WORK COMPENSATION PLANS—BENEFITS

Sections

50.60.010	Legislative intent.
50.60.020	Definitions.
50.60.030	Compensation plan—Criteria for approval.
50.60.040	Compensation plan—Approval or rejection—Resubmission.
50.60.050	Approved plan—Misrepresentation—Penalties.
50.60.060	Approved plan—Effective date—Expiration.
50.60.070	Approved plan—Revocation—Review of plans.
50.60.080	Approved plan—Modification.
50.60.090	Shared work benefits—Eligibility.
50.60.100	Benefits—Weekly amount—Maximum entitlement— Claims—Conditions.
50.60.110	Benefits—Charge to employers' experience rating accounts.
50.60.120	Benefits—Exhaustee.
50.60.900	Title and rules to apply to shared work benefits—Conflict with federal requirements.
50.60.901	Rules.
50.60.902	Effective date—1983 c 207.

50.60.010 Legislative intent. In order to provide an economic climate conducive to the retention of skilled workers in industries adversely affected by general economic downturns and to supplement depressed buying power of employees affected by such downturns, the legislature finds that the public interest would be served by the enactment of laws providing greater flexibility in the payment of unemployment compensation benefits in situations where qualified employers elect to retain employees at reduced hours rather than instituting layoffs. [1983 c 207 § 1.]

50.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affected unit" means a specified plant, department, shift, or other definable unit consisting of one or more employees, to which an approved shared work compensation plan applies.

(2) "Fringe benefits" include health insurance, retirement benefits under benefit pension plans as defined in section 3(35) of the employee retirement income security act of 1974, paid vacation and holidays, and sick leave, which are incidents of employment in addition to cash remuneration.

(3) "Shared work benefits" means the benefits payable to employees in an affected unit under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than temporary layoffs.

(5) "Shared work employer" means an employer, one or more of whose employees are covered by a shared work compensation plan.

(6) "Usual weekly hours of work" means the normal number of hours of work for full-time employees in the affected unit when that unit is operating on a full-time basis, not to exceed forty hours and not including overtime.

(7) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(8) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan. [1983 c 207 § 2.]

50.60.030 Compensation plan—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected units to which it applies;

(2) An employee in an affected unit are identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for an employee in an affected unit are reduced by not less than ten percent and not more than fifty percent;

(4) Fringe benefits will continue to be provided on the same basis as before the reduction in work hours. In no event shall the level of health benefits be reduced due to a reduction in hours;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least ten percent of the employees in the affected units to which the plan applies and which would have resulted in an equivalent reduction in work hours;

(6) The plan applies to at least ten percent of the employees in the affected unit;

(7) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any employee in the affected unit;

(8) The plan will not subsidize seasonal employers during the off season nor subsidize employers who have traditionally used part-time employees; and

(9) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan.

In addition to subsections (1) through (9) of this section, the commissioner shall take into account any other factors which may be pertinent. [1985 c 43 § 1; 1983 c 207 § 3.]

Conflict with federal requirements—1985 c 43: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the

conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 43 § 2.]

Severability—1985 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 43 § 3.]

50.60.040 Compensation plan—Approval or rejection—Resubmission. The commissioner shall approve or reject a shared work compensation plan in writing within fifteen days of its receipt. The reasons for the rejection shall be final and nonappealable, but the rejection shall not prevent an employer from submitting another plan for approval not earlier than fifteen days after the date of a previous written rejection. [1983 c 207 § 4.]

50.60.050 Approved plan—Misrepresentation—Penalties. If an approved plan or any representation for implementation of the plan is intentionally and substantially misleading or false, any individual who participated in any such misrepresentation shall be subject to criminal prosecution as well as personal liability for any amount of benefits deemed by the commissioner to have been improperly paid from the fund as a result thereof. This provision for personal liability is in addition to any remedy against individual claimants for collection of overpayment of benefits if such claimants participated in or were otherwise at fault in the overpayment. [1983 c 207 § 5.]

50.60.060 Approved plan—Effective date—Expiration. A shared work compensation plan shall be effective on the date specified in the plan or on the first day of the second calendar week after the date of the commissioner's approval, whichever is later. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier, unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation. [1983 c 207 § 6.]

50.60.070 Approved plan—Revocation—Review of plans. The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected unit employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve month period the plan is in effect to assure that it continues to meet the requirements of this chapter. [1983 c 207 § 7.]

50.60.080 Approved plan—Modification. An approved shared work compensation plan in effect may be modified with the approval of the commissioner. If the hours of work are increased or decreased beyond the level in the original plan, or any other condition is changed, the employer shall promptly notify the commissioner. If the changes meet the requirements for approval of a plan, the commissioner shall approve the modifications. This approval shall not change the expiration date of the original plan. If the modifications do not meet the requirements for approval, the commissioner shall revoke the plan as specified in RCW 50.60.060. [1983 c 207 § 8.]

50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as a member of an affected unit under an approved shared work compensation plan which was in effect for that week;

(2) The individual was able to work and was available for additional hours of work and for full-time work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an employee in an affected unit for less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for that week. [1983 c 207 § 9.]

50.60.100 Benefits—Weekly amount—Maximum entitlement—Claims—Conditions. (1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter, nor may an individual be paid shared work benefits for more than a total of twenty-six weeks in any twelve-month period under a shared work compensation plan;

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6)(a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment compensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work. A week for which benefits are paid under this subsection shall count as a week of shared work benefits;

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount. Such a week shall not be counted as a week for which shared work benefits were received;

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. Such a week shall not be counted as a week for which shared work benefits were received. [1983 c 207 § 10.]

50.60.110 Benefits—Charge to employers' experience rating accounts. Shared work benefits shall be charged to employers' experience rating accounts in the same manner as other benefits under this title are charged. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to their accounts in the same manner as other benefits under this title are attributed. [1983 c 207 § 11.]

50.60.120 Benefits—Exhaustee. An individual who has received all of the shared work benefits, or all of the combined unemployment compensation and shared work benefits, available in a benefit year shall be considered an exhaustee for purposes of the extended benefits program under chapter 50.22 RCW, and, if otherwise eligible under that chapter, shall be eligible to receive extended benefits. [1983 c 207 § 12.]

50.60.900 Title and rules to apply to shared work benefits—Conflict with federal requirements. Unless inconsistent with or otherwise provided by this section, this title and rules adopted under this title apply to shared work benefits. To the extent permitted by federal law, those rules may make such distinctions and requirements as may be necessary with respect to unemployed individuals to carry out the purposes of this chapter, including rules defining usual hours, days, work week, wages, and the duration of plans adopted under this chapter. To the extent that any portion of this chapter may be inconsistent with the requirements of federal law relating to the payment of unemployment insurance benefits, the conflicting provisions or interpretations of this chapter shall be deemed inoperative, but only to the extent of the conflict. If the commissioner determines that such a conflict exists, a statement to that effect shall be filed with the governor's office for transmission to both houses of the legislature. [1983 c 207 § 13.]

50.60.901 Rules. The department shall adopt such rules as are necessary to carry out the purposes of chapter 207, Laws of 1983. [1998 c 245 § 101; 1983 c 207 § 14.]

50.60.902 Effective date—1983 c 207. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect with the weeks beginning after July 31, 1983. [1983 c 207 § 16.]

Chapter 50.62 RCW

SPECIAL EMPLOYMENT ASSISTANCE

Sections

50.62.010	Legislative findings.
50.62.020	Definitions.
50.62.030	Job service program or activity.
50.62.040	Annual report—Wage and benefit history.

50.62.010 Legislative findings. The legislature finds and declares that:

(1) The number of persons unemployed in the state is significantly above the national average.

(2) Persons who are unemployed represent a skilled resource to the economy and the quality of life for all persons in the state.

(3) There are jobs available in the state that can be filled by unemployed persons.

(4) A public labor exchange can appreciably expedite the employment of unemployed job seekers and filling employer vacancies thereby contributing to the overall health of the state and national economies.

(5) The Washington state job service of the employment security department has provided a proven service of assisting persons to find employment for the past fifty years.

(6) Expediting the reemployment of unemployment insurance claimants will reduce payment of claims drawn from the state unemployment insurance trust fund.

(7) Increased emphasis on assisting in the reemployment of claimants and monitoring claimants' work search efforts will positively impact employer tax rates resulting from the recently enacted experience rating legislation, chapter 205, Laws of 1984.

(8) Special employment service efforts are necessary to adequately serve agricultural employers who have unique needs in the type of workers, recruitment efforts, and the urgency of obtaining sufficient workers.

(9) Study and research of issues related to employment and unemployment provides economic information vital to the decision-making process.

(10) Older workers and the long-term unemployed experience greater difficulty finding new employment at wages comparable to their prelayoff earnings relative to all unemployment insurance claimants who return to work.

(11) After a layoff, older unemployed workers and the long-term unemployed workers fail to find unemployment insurance-covered employment at a much higher rate than other groups of unemployment insurance claimants.

The legislature finds it necessary and in the public interest to have a program of job service to assist persons drawing unemployment insurance claims to find employment, to provide employment assistance to the agricultural industry, and to conduct research into issues related to employment and unemployment. [1987 c 284 § 1; 1987 c 171 § 1; 1985 ex.s. c 5 § 1.]

Reviser's note: This section was amended by 1987 c 171 § 1 and by 1987 c 284 § 1, each without reference to the other. Both amendments are

(2004 Ed.)

incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—1987 c 171: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 171 § 7.]

Severability—1987 c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 171 § 8.]

Conflict with federal requirements—1985 ex.s. c 5: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act." [1985 ex.s. c 5 § 16.]

Severability—1985 ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 ex.s. c 5 § 17.]

50.62.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Job service" means the employment assistance program of the employment security department;

(2) "Employment assistance" means services to unemployed persons focused on and measured by the obtaining of employment;

(3) "Labor exchange" means those activities which match labor supply and labor demand, including recruitment, screening, and referral of qualified workers to employers;

(4) "Special account of the administrative contingency fund" means that fund under RCW 50.24.014 established within the administrative contingency fund of the employment security department which provides revenue for the purposes of this chapter.

(5) "Continuous wage and benefit history" means an information and research system utilizing a longitudinal data base containing information on both employment and unemployment.

(6) "Long-term unemployed" means demographic groups of unemployment insurance claimants identified by the employment security department pursuant to RCW 50.62.040(1)(e) which have the highest percentages of persons who have drawn at least fifteen weeks of unemployment insurance benefits or have the highest percentage of persons who have exhausted their unemployment insurance benefits.

(7) "Older unemployed workers" means unemployment insurance claimants who are at least fifty years of age. [1987 c 284 § 2; 1985 ex.s. c 5 § 2.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

essary to produce the annual report described in subsection (1) of this section. [1998 c 245 § 102; 1987 c 284 § 4.]

50.62.030 Job service program or activity. Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities shall include, but are not limited to:

(1) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department shall make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;

(2) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(3) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(4) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment. [1995 c 135 § 4. Prior: 1987 c 284 § 3; 1987 c 171 § 2; 1985 ex.s. c 5 § 3.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.040 Annual report—Wage and benefit history.

(1) Each year the employment security department may publish an annual report on the unemployed based on research conducted on the continuous wage and benefit history and other sources that identifies:

(a) The demographic groups of unemployment insurance claimants that experience the greatest difficulty finding new employment with wages comparable to their prelayoff earnings;

(b) The demographic groups of unemployment insurance claimants that have the highest rates of failure to find unemployment insurance covered-employment after a layoff;

(c) The demographic, industry, and employment characteristics of the unemployment insurance claimant population most closely associated with the exhaustion of an unemployment claim;

(d) The demographic, industry, and employment characteristics of those locked-out workers who are eligible for unemployment compensation under RCW 50.20.090; and

(e) The demographic groups which are defined as the "long-term unemployed" for purposes of this chapter. This listing shall be updated each year.

(2) The employment security department shall continue to fund the continuing wage and benefit history at a level nec-

Chapter 50.65 RCW

WASHINGTON SERVICE CORPS

Sections

50.65.010	Legislative findings.
50.65.020	Definitions.
50.65.030	Washington service corps established—Commissioner's duties.
50.65.040	Washington service corps—Criteria for enrollment.
50.65.050	Washington service corps—List of local youth employment opportunities.
50.65.060	Washington service corps—Placement under work agreements.
50.65.065	Work agreements—Requirements.
50.65.070	Enrollees not to displace current workers.
50.65.080	Commissioner to seek assistance for Washington service corps.
50.65.090	Authority for income-generating projects—Disposition of income.
50.65.100	Work agreements—Nondiscrimination.
50.65.110	Enrollees—Training and subsistence allowance—Medical insurance and medical aid—Notice of coverage.
50.65.120	Exemption of enrollees from unemployment compensation coverage.
50.65.130	Federal and private sector funds and grants.
50.65.138	Use of funds for enrollees and projects in distressed areas—Service corps.
50.65.143	Limitation on use of funds for administration—Service corps.
50.65.150	Washington service corps scholarship account—Created—Use.
50.65.200	Washington serves—Findings—Declaration.
50.65.210	Washington serves—Definitions.
50.65.220	Washington serves—Program—Created—Procedure—Intent.
50.65.230	Washington serves—Applicants—Eligibility.
50.65.240	Washington serves—Disqualification for Washington service corps participation.
50.65.250	Washington serves—Volunteers—Selection—Placement.
50.65.260	Washington serves—Volunteers—Support.
50.65.270	Washington serves—Volunteers—Medical benefits—Benefit limits.
50.65.280	Washington serves—Displacement of current workers prohibited.
50.65.290	Washington serves—Volunteers—Unemployment compensation coverage limited.
50.65.300	Washington serves—Volunteers—Assistance to defer student loan payments.
50.65.310	Washington serves—Volunteers—Subsequent development of skills and experience—Recognition.
50.65.320	Washington serves—Service placement—Work agreements—Contracts—Rules for agencies—Financial support for organizations.
50.65.330	Washington serves—Gifts, grants, endowments—Matching funds.
50.65.901	Conflict with federal requirements—1983 1st ex.s. c 50.
50.65.902	Severability—1983 1st ex.s. c 50.
50.65.903	Conflict with federal requirements—1987 c 167.
50.65.904	Severability—1987 c 167.
50.65.905	Effective date—1987 c 167.
50.65.906	Conflict with federal requirements—1993 sp.s. c 7.
50.65.907	Short title—1993 sp.s. c 7.
50.65.908	Severability—1993 sp.s. c 7.

Washington conservation corps: Chapter 43.220 RCW.

50.65.010 Legislative findings. The legislature finds that:

(1) The unemployment rate in the state of Washington is the highest since the great depression, with a significantly higher rate among Washington youth.

(2) The policy of the state is to conserve and protect its natural and urban resources, scenic beauty, and historical and cultural sites.

(2004 Ed.)

(3) It is in the public interest to target employment projects to those activities which have the greatest benefit to the local economy.

(4) There are many unemployed young adults without hope or opportunities for entrance into the labor force who are unable to afford higher education and who create a serious strain on tax revenues in community services.

(5) The severe cutbacks in community and human services funding leave many local community service agencies without the resources to provide necessary services to those in need.

(6) The talent and energy of Washington's unemployed young adults are an untapped resource which should be challenged to meet the serious shortage in community services and promote and conserve the valuable resources of the state.

Therefore, the legislature finds it necessary and in the public interest to enact the Washington youth employment and conservation act. As part of this chapter, the Washington service corps is established as an operating program of the employment security department. The legislature desires to facilitate the potential of youth to obtain available job opportunities in both public and private agencies. [1987 c 167 § 1; 1983 1st ex.s. c 50 § 1.]

Reviser's note: Wherever the phrase "this act" occurred in RCW 50.65.010 through 50.65.130, it has been changed to "this chapter." "This act" [1983 1st ex.s. c 50] consists of this chapter and three uncodified sections.

50.65.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commissioner" means the commissioner of the employment security department.

(2) "Department" means the employment security department.

(3) "Enrollees" means those persons who have completed enrollment forms, completed a work agreement, and who have entered into the Washington service corps following the approval of the director of the supervising agency.

(4) "Corps" means the Washington service corps.

(5) "Work agreement" means the written agreement between the department, the enrollee and the supervising agency under this chapter for a period of up to eighteen months.

(6) "Supervising agencies" means those private or public agencies which develop and implement full-time service projects in which enrollees agree to participate.

(7) "Matching funds" means funding that is provided to the employment security department by agencies or individuals as financial support for a portion of the stipend or wage and benefits paid to the enrollee.

(8) "Financial support" means any thing of value contributed by agencies or individuals to the department for a youth employment project which is reasonably calculated to sup-

port directly the development and expansion of a particular program under this chapter and which represents an addition to any financial support previously or customarily provided by the individual or agency. "Financial support" includes, but is not limited to funds, equipment, facilities, and training.

(9) "Director" means the individual who shall serve as the director of the exchange. [1987 c 167 § 2; 1983 1st ex.s. c 50 § 2.]

50.65.030 Washington service corps established—Commissioner's duties. The Washington service corps is established within the employment security department. The commissioner shall:

(1) Appoint a director and other personnel as necessary to carry out the purposes of this chapter;

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies or departments providing youth services to ensure that funds appropriated for the purposes of this chapter will not be expended to duplicate existing services, but will increase the services of youth to the state;

(3) The employment security department is authorized to place subgrants with other federal, state, and local governmental agencies and private agencies to provide youth employment projects and to increase the numbers of youth employed;

(4) Determine appropriate financial support levels by private business, community groups, foundations, public agencies, and individuals which will provide matching funds for enrollees in service projects under work agreements. The matching funds requirement may be waived for public agencies or reduced for private agencies;

(5) Recruit enrollees who are residents of the state unemployed at the time of application and are at least eighteen years of age but have not reached their twenty-sixth birthday;

(6) Recruit supervising agencies to host the enrollees in full-time service activities which shall not exceed eleven months' duration;

(7) Assist supervising agencies in the development of scholarships and matching funds from private and public agencies, individuals, and foundations in order to support a portion of the enrollee's stipend and benefits;

(8) Develop general employment guidelines for placement of enrollees in supervising agencies to establish appropriate authority for hiring, firing, grievance procedures, and employment standards which are consistent with state and federal law;

(9) Match enrollees with appropriate public agencies and available service projects;

(10) Monitor enrollee activities for compliance with this chapter and compliance with work agreements;

(11) Assist enrollees in transition to employment upon termination from the programs, including such activities as orientation to the labor market, on-the-job training, and placement in the private sector;

(12) Establish a program for providing incentives to encourage successful completion of terms of enrollment in the service corps and the continuation of educational pursuits. Such incentives shall be in the form of educational assistance equivalent to two years of community or technical college tuition for eleven months of service. Educational assistance

funding shall only be used for tuition, fees, and course-related books and supplies. Enrollees who receive educational assistance funding shall start using it within one year of their service completion and shall finish using it within four years of their service completion;

(13) Enter into agreements with the state's community and technical college system and other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics for those participants who may benefit by participation in such classes. Participation is not mandatory but shall be strongly encouraged. [1993 c 302 § 1; 1987 c 167 § 3; 1983 1st ex.s. c 50 § 3.]

Effective date—1993 c 302: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 302 § 9.]

50.65.040 Washington service corps—Criteria for enrollment. The commissioner may select and enroll in the Washington service corps program any person who is at least eighteen years of age but has not reached their twenty-sixth birthday, is a resident of the state, and who is not for medical, legal, or psychological reasons incapable of service. Efforts shall be made to enroll youths who are economically, socially, physically, or educationally disadvantaged. The commissioner may prescribe such additional standards and procedures in consultation with supervising agencies as may be necessary in conformance with this chapter. In addition, the commissioner may select and enroll youth fourteen to seventeen years of age on special projects during the summer and at other times during the school year that may complement and support their school curriculum or that link and support service with learning. [1993 c 302 § 2; 1987 c 167 § 4; 1983 1st ex.s. c 50 § 4.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.050 Washington service corps—List of local youth employment opportunities. The commissioner shall use existing local offices of the employment security department or contract with independent, private nonprofit agencies in a local community to establish the Washington service corps program and to insure coverage of the program statewide. Each local office shall maintain a list of available youth employment opportunities in the jurisdiction covered by the local office and the appropriate forms or work agreements to enable the youths to apply for employment in private or public supervising agencies. [1987 c 167 § 5; 1983 1st ex.s. c 50 § 5.]

50.65.060 Washington service corps—Placement under work agreements. Placements in the Washington service corps shall be made in supervising agencies under work agreements as provided under this chapter and shall include those assignments which provide for addressing community needs and conservation problems and will assist the community in economic development efforts. Each work agreement shall:

(1) Demonstrate that the service project is appropriate for the enrollee's interests, skills, and abilities and that the project is designed to meet unmet community needs;

(2) Include a requirement of regular performance evaluation. This shall include clear work performance standards set by the supervising agency and procedures for identifying strengths, recommended improvement areas and conditions for probation or dismissal of the enrollee; and

(3) Include a commitment for partial financial support for the enrollee from private industry, public agencies, community groups, or foundations. The commissioner may establish additional standards for the development of placements for enrollees with supervising agencies and assure that the work agreements comply with those standards. This section shall not apply to conservation corps programs established by chapter 43.220 RCW.

Agencies of the state may use the Washington service corps for the purpose of employing youth qualifying under this chapter. [1993 c 302 § 3; 1987 c 167 § 6; 1983 1st ex.s. c 50 § 6.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.065 Work agreements—Requirements. For each enrollee, the work agreements, or combination of work agreements, developed under RCW 50.65.060 shall:

(1) Include a variety of experiences consisting of: Indoor activities; outdoor activities; and volunteer activities;

(2) Provide time for participation in a core training program common to all participants. [1993 c 302 § 4.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.070 Enrollees not to displace current workers. The assignment of enrollees shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Supervising agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of utilizing an enrollee with funds available. In circumstances where substantial efficiencies or a public purpose may result, supervising agencies may utilize enrollees to carry out essential agency work or contractual functions without displacing current employees. [1983 1st ex.s. c 50 § 7.]

50.65.080 Commissioner to seek assistance for Washington service corps. The commissioner shall seek and may accept, on behalf of the Washington service corps, charitable donations of cash and other assistance including, but not limited to, equipment and materials if the donations are available for appropriate use for the purposes set forth in this chapter. [1993 c 302 § 6; 1983 1st ex.s. c 50 § 8.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.090 Authority for income-generating projects—Disposition of income. The commissioner may enter into income-generating projects with public or private organizations to further the purposes of this chapter. Moneys received from contractual projects qualifying under this chapter shall be deposited in the state general fund. This section does not apply to conservation corps programs established by chapter 43.220 RCW. [1983 1st ex.s. c 50 § 9.]

(2004 Ed.)

50.65.100 Work agreements—Nondiscrimination.

All parties entering into work agreements under this chapter shall agree that they will not discriminate in the providing of any service on the basis of race, creed, ethnic origin, sex, age, or political affiliation. [1983 1st ex.s. c 50 § 10.]

50.65.110 Enrollees—Training and subsistence allowance—Medical insurance and medical aid—Notice of coverage. The compensation received shall be considered a training and subsistence allowance. Comprehensive medical insurance, and medical aid shall be paid for the enrollees in the service corps by the commissioner in accordance with the standards and limitations of the appropriation provided for this chapter. The department shall give notice of coverage to the director of labor and industries after enrollment. The department shall not be deemed an employer of an enrollee for any other purpose.

Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age health and survivor's insurance, state retirement plans, and vacation leave do not apply to enrollees. [1987 c 167 § 7; 1985 c 230 § 6; 1983 1st ex.s. c 50 § 11.]

Severability—1985 c 230: See RCW 43.220.902.

50.65.120 Exemption of enrollees from unemployment compensation coverage. The services of enrollees placed with supervising agencies described in chapter 50.44 RCW are exempt from unemployment compensation coverage under RCW 50.44.040(5) and the enrollees shall be so advised by the department. [1983 1st ex.s. c 50 § 12.]

50.65.130 Federal and private sector funds and grants. In addition to any other power, duty, or function described by law or rule, the employment security department, through the program established under this chapter, may accept federal or private sector funds and grants and implement such programs relating to community services or employment programs and may enter into contracts respecting such funds or grants. The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or private source funds to accomplish the purposes of this chapter. The Washington service corps shall be the sole recipient of federal funds for youth employment and conservation corps programs. [1987 c 167 § 8; 1983 1st ex.s. c 50 § 13.]

50.65.138 Use of funds for enrollees and projects in distressed areas—Service corps. Sixty percent of the general funds available to the service corps program shall be for enrollees from distressed areas and for projects in distressed areas. A distressed area shall mean:

(1) A county which has an unemployment rate which is twenty percent above the state average for the immediately preceding three years;

(2) A community which has experienced sudden and severe loss of employment; or

(3) An area within a county which area:

(a) Is composed of contiguous census tracts;

(b) Has a minimum population of five thousand persons;

(c) The median household income is at least thirty-five percent below the county's median household income, as determined from data collected for the preceding United States ten-year census; and

(d) Has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects. [1987 c 167 § 10.]

50.65.143 Limitation on use of funds for administration—Service corps. (1) Not more than fifteen percent of the funds available for the service corps shall be expended for administrative costs. For the purposes of this chapter, "administrative costs" include, but are not limited to, program planning and evaluation, budget development and monitoring, personnel management, contract administration, administrative payroll, development of program reports, and administrative office space costs and utilities.

(2) The fifteen percent limitation does not include costs for any of the following: Program support activities such as direct supervision of enrollees and corpsmembers, counseling, education and job training, equipment, advisory board expenses, and extraordinary recruitment and placement procedures necessary to fill project positions.

(3) The total for all items included under subsection (1) of this section and excluded under subsection (2) of this section shall not: (a) Exceed thirty percent of the appropriated funds available during a fiscal biennium for the service and conservation corps programs; or (b) result in an average cost per enrollee or corpsmember from general funds exceeding seven thousand dollars in the 1987-89 biennium and in succeeding biennia as adjusted by inflation factors established by the office of financial management for state budgeting purposes. The test included in (a) and (b) of this subsection are in the alternative, and it is only required that one of the tests be satisfied. [1987 c 167 § 11.]

50.65.150 Washington service corps scholarship account—Created—Use. The Washington service corps scholarship account is created in the custody of the state treasurer. The account shall consist of a portion of Washington service corps funding, deposited by the commissioner, in an amount sufficient to provide for the future awarding of educational assistance grants described in RCW 50.65.030. Expenditures from the account may be used only for educational assistance grants described in RCW 50.65.030. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All earnings of investments of surplus balances in the account shall be deposited to the treasury income account created in RCW 43.84.092. [1993 c 302 § 5.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.200 Washington serves—Findings—Declaration. The legislature finds that:

(1) Budget constraints are causing severe gaps and reductions in vital services to local communities and citizens. Some of these gaps in services can be filled by citizen volunteers through an organized program to recruit and place volunteers and to expand opportunities for volunteers to serve their communities;

(2) The federal government is proposing expansion of national services programs. These programs may require significant matching resources from states. State funds supporting the Washington serves program can serve as a required matching source to leverage additional federal national service resources;

(3) Washington state has, through the Washington service corps, successfully offered service opportunities and meaningful work experience to young adults between the ages of eighteen and twenty-five years;

(4) The need exists to expand full-time volunteer opportunities to citizens age twenty-one and over, to encourage senior citizens, college graduates, professional and technically skilled persons, and other adult citizens, to contribute their critical expertise, experience, labor, and commitment to meeting the needs of their communities;

(5) It is appropriate and in the public's interest for Washington state to create opportunities for citizens to engage in full-time, meaningful volunteer service in governmental or private nonprofit agencies, institutions, programs, or activities that address the social, economic, educational, civic, cultural, or environmental needs of local communities;

(6) Through volunteer service, citizens apply their skills and knowledge to the resolution of critical problems or meeting unmet needs, gain valuable experience, refine or develop new skills, and instill a sense of civic pride and commitment to their community;

(7) There is a need to coordinate state and federally funded volunteer service programs that provide living allowances and other benefits to volunteers to maximize the benefits to volunteers and the organizations in which they serve.

It is therefore the legislature's desire to expand full-time volunteer opportunities for citizens age twenty-one and over and to provide appropriate incentives to those who serve. Such a program should be implemented statewide and coordinated across programs. [1993 sp.s. c 7 § 1.]

50.65.210 Washington serves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commissioner" means the commissioner of the employment security department.

(2) "*Council" means the Washington council on volunteerism and citizen service authorized by chapter 43.150 RCW.

(3) "Department" means the employment security department.

(4) "Volunteer" means a person at least twenty-one years of age who, upon application and acceptance into the program, is placed in a governmental or private, nonprofit organization to perform full-time service for the benefit of the community, and who receives a living allowance and other benefits as authorized under this chapter. [1993 sp.s. c 7 § 2.]

***Reviser's note:** RCW 43.150.060, which created the Washington state council on volunteerism and citizen service, was repealed by 1995 c 269 § 2302, effective July 1, 1995.

50.65.220 Washington serves—Program—Created—Procedure—Intent. There is hereby created within the employment security department a program for full-time community service that shall be known and referred to as the Washington serves program. The department shall recruit, train, place, and evaluate applicants to the program. The department may accept applications and enter into agreements or contracts with any governmental or private nonprofit organization appropriate for placement of volunteers under this program. The commissioner, after consultation with the council, may adopt rules as needed to carry out the intent and purposes of this program. It is the intent of the legislature that the commissioner coordinate this program with all volunteer service programs, whether funded with state or federal dollars, in order to maximize the benefits to volunteers and the communities served under the program. It is also the legislature's intent that to the extent that state funds are paid directly to persons that participate in the program, whether to reimburse, support, assist, or provide other direct payment, no volunteer may have such reimbursement, support, assistance, or other payment reduced or withheld for having served in the program. [1993 sp.s. c 7 § 3.]

50.65.230 Washington serves—Applicants—Eligibility. (1) Applicants to the Washington serves program shall be at least twenty-one years of age and a resident of Washington state.

(2) Applicants may apply to serve for a period of service of one year, except that volunteers may serve for periods of service of less than one year if it is determined by the commissioner, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce skill or necessary to enable a person or organization to participate in the program.

(3) Volunteers may reapply for periods of service totaling not more than two additional years.

(4) Applicants to the program shall be committed to providing full-time service to the community. [1993 sp.s. c 7 § 4.]

50.65.240 Washington serves—Disqualification for Washington service corps participation. No individual may participate in the Washington serves program created by chapter 7, Laws of 1993 sp. sess., if the person has previously participated for six months or longer in the Washington service corps within the last three years. [1993 c 302 § 10.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.250 Washington serves—Volunteers—Selection—Placement. (1) Program volunteers shall be selected from among qualified individuals submitting applications for full-time service at such time, in such form, and containing such information as may be necessary to evaluate the suitability of each individual for service, and available placements. The commissioner or the commissioner's designee shall review the application of each individual who applies in conformance with selection criteria established by the com-

missioner after consultation with the council, and who, on the basis of the information provided in the application, is determined to be suitable to serve as a volunteer under the Washington serves program.

(2) Within available funds, volunteers may be placed with any public or private nonprofit organization, program, or project that qualifies to accept program volunteers according to the rules and application procedures established by the commissioner. Work shall benefit the community or state at large and may include but is not limited to programs, projects, or activities that:

(a) Address the problems of jobless, homeless, hungry, illiterate, or functionally illiterate persons, and low-income youths;

(b) Provide support and a special focus on those project activities that address the needs of the unemployed and those in need of job training or retraining;

(c) Address significant health care problems, including services to homeless individuals and other low-income persons, especially children, through prevention and treatment;

(d) Meet the health, education, welfare, or related needs of low-income persons, particularly children and low-income minority communities;

(e) Provide care or rehabilitation services to the mentally ill, developmentally disabled, or other persons with disabilities;

(f) Address the educational and education-related needs of children, youth, families, and young adults within public educational institutions or related programs;

(g) Address alcohol and drug abuse prevention, education, and related activities; and

(h) Seek to enhance, improve, or restore the environment or that educate or advocate for a sustainable environment.

(3) Every reasonable effort shall be made to place participants in programs, projects, or activities of their choice if the agencies, programs, or activities are consistent with the intent and purposes of the Washington serves program, if there is mutual agreement between the agency, program, or activity and the volunteer, and if the volunteer's service is consistent with the intent and purpose of the program and would benefit the community or the state as a whole. [1993 sp.s. c 7 § 5.]

50.65.260 Washington serves—Volunteers—Support. (1) Volunteers accepted into the Washington serves program and placed in an approved agency, program, or activity, shall be provided a monthly subsistence allowance in an amount determined by the commissioner taking into consideration the allowance given to VISTA, Washington service corps, and other similar service programs. For those persons who qualify and are granted a deferment of federal student loan payments while serving in the program, the rate of compensation shall be equal to but not greater than the monthly subsistence allowance granted Volunteers In Service To America (VISTA) serving in this state, as determined by the national ACTION agency or its successor, in accordance with section 105(b)(2) of the Domestic Volunteer Service Act of 1973, P.L. 93-113, as amended.

(2) The commissioner or the commissioner's designee shall, within available funds, ensure that each volunteer has available support to enable the volunteer to perform the work to which the volunteer is assigned. Such support may include,

but is not limited to, reimbursement for travel expenses, payment for education and training expenses, including preservice and on-the-job training necessary for the performance of duties, technical assistance, and other support deemed necessary and appropriate.

(3) At the end of each volunteer's period of service of not less than one year, each volunteer may receive a postservice stipend for each month of completed service in an amount determined by the commissioner. The postservice stipend for those persons who qualify and are granted a deferment of federal student loan payments while serving in this program shall be an amount equal to but not greater than the amount or rate determined by the national ACTION agency or its successor, in accordance with section 105(b)(2) of the Domestic Volunteer Service Act of 1973, P.L. 93-113 as amended, for Volunteers In Service To America (VISTA), who are providing services in this state. Volunteers under the Washington serves program may accrue the stipend for each month of their service period of not less than one year, including any month during which they were in training. The commissioner or the commissioner's designee may, on an individual basis, make an exception to provide a stipend to a volunteer who has served less than one year.

(4) Stipends shall be payable to the volunteer only upon completion of the period of service. Under circumstances determined by the commissioner, the stipend may be paid on behalf of the volunteer to members of the volunteer's family or others designated by the volunteer. [1993 sp.s. c 7 § 6.]

50.65.270 Washington serves—Volunteers—Medical benefits—Benefit limits. Within available funds, medical aid coverage under chapter 51.36 RCW and medical insurance shall be provided to all volunteers under this program. The department shall give notice of medical aid coverage to the director of labor and industries upon acceptance of the volunteer into the program. The department shall not be deemed an employer of any volunteer under the Washington serves program for any other purpose. Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age, health and survivor's insurance, state retirement plans, and vacation leave do not apply to volunteers under this program. [1993 sp.s. c 7 § 7.]

50.65.280 Washington serves—Displacement of current workers prohibited. The assignment of volunteers under the Washington serves program shall not result in the displacement of currently employed workers, including partial displacement such as would result from a reduction in hours of nonovertime work, wages, or other employment benefits. Participating agencies, programs, or activities may not terminate, lay off, or reduce the working hours of any employee for the purpose of using volunteers under the Washington serves program. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use volunteers to carry out essential agency work or contractual functions without displacing current employees. [1993 sp.s. c 7 § 8.]

50.65.290 Washington serves—Volunteers—Unemployment compensation coverage limited. The services of volunteers placed with participating agencies described in chapter 50.44 RCW are not eligible for unemployment compensation coverage. Each volunteer shall be so advised by the commissioner or the commissioner's designee. [1993 sp.s. c 7 § 9.]

50.65.300 Washington serves—Volunteers—Assistance to defer student loan payments. The commissioner or the commissioner's designee may assist any volunteer serving full-time under the Washington serves program in obtaining a service deferment of federally funded student loan payments during his or her period of service. [1993 sp.s. c 7 § 10.]

50.65.310 Washington serves—Volunteers—Subsequent development of skills and experience—Recognition. The commissioner or the commissioner's designee may provide or arrange for educational, vocational, or job counseling for program volunteers at the end of their period of service to (1) encourage volunteers to use the skills and experience which they have derived from their training and service, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers. The commissioner or the commissioner's designee may also assist volunteers in developing a plan for gainful employment.

The commissioner shall provide for an appropriate means of recognition or certification of volunteer service. [1993 sp.s. c 7 § 11.]

50.65.320 Washington serves—Service placement—Work agreements—Contracts—Rules for agencies—Financial support for organizations. The executive administrator of the Washington serves program shall recruit and develop service placements and may enter into work agreements or contracts as needed to implement the Washington serves program. The commissioner, after consultation with the council, may adopt rules for participating agencies which rules may include, but are not limited to: Supervision of volunteers, reasonable work space or other working environment conditions, ongoing training, the handling of grievances or disputes, performance evaluations, frequency of agency contacts, and liability insurance coverage. The commissioner shall determine financial support levels for organizations receiving volunteer placements that will provide matching funds for enrollees in service projects under work agreements. [1993 sp.s. c 7 § 12.]

50.65.330 Washington serves—Gifts, grants, endowments—Matching funds. The department may receive such gifts, grants, and endowments from private or public sources that may be made from time to time, in trust or otherwise, for the use and benefit of the Washington serves program and spend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or pri-

vate source funds to accomplish the purposes of this chapter. [1993 sp.s. c 7 § 13.]

50.65.901 Conflict with federal requirements—1983 1st ex.s. c 50. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 1st ex.s. c 50 § 16.]

50.65.902 Severability—1983 1st ex.s. c 50. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 50 § 17.]

50.65.903 Conflict with federal requirements—1987 c 167. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 167 § 12.]

50.65.904 Severability—1987 c 167. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 167 § 13.]

50.65.905 Effective date—1987 c 167. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987. [1987 c 167 § 15.]

50.65.906 Conflict with federal requirements—1993 sp.s. c 7. If any part of this act is found to be in conflict with federal requirements which are prescribed conditions to the receipt of federal funds or participation in any federal program, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of the act. Rules adopted pursuant to this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1993 sp.s. c 7 § 14.]

50.65.907 Short title—1993 sp.s. c 7. Sections 1 through 13 of this act may be known and cited as the Washington serves act. [1993 sp.s. c 7 § 15.]

50.65.908 Severability—1993 sp.s. c 7. If any provision of this act or its application to any person or circum-

(2004 Ed.)

stance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 sp.s. c 7 § 18.]

Chapter 50.70 RCW

PROGRAMS FOR DISLOCATED FOREST PRODUCTS WORKERS

Sections

50.70.030	Employment opportunities—Benefits.
50.70.040	Recruitment—Career orientation services—Career counseling.
50.70.050	Department of natural resources duties.
50.70.900	Severability—1991 c 315.
50.70.901	Conflict with federal requirements—1991 c 315.
50.70.902	Effective date—1991 c 315.

Community college program for dislocated forest products workers: RCW 28B.50.259.

Emergency mortgage and rental assistance program—Rural natural resources impact areas—Grants and loans: RCW 43.63A.610 through 43.63A.640.

Enrollment of persons in timber impact areas in basic health plan: RCW 70.47.115.

Skagit river salmon recovery plan: RCW 77.95.140.

50.70.030 Employment opportunities—Benefits. (1) Employment opportunities under the program shall consist of activities that improve the value of state lands and waters. These activities may include, but are not limited to, thinning and precommercial thinning, pruning, slash removal, reforestation, fire suppression, trail maintenance, maintenance of recreational facilities, dike repair, development and maintenance of tourist facilities, and stream enhancement.

(2) Enrollees in the program shall receive medical and dental benefits as provided under chapter 41.05 RCW, but are exempt from the provisions of chapter 41.06 RCW. Each week, enrollees shall not work more than thirty-two hours in this program and must participate in eight hours of career orientation as established in RCW 50.70.040. Participation in the program is limited to six months. [1991 c 315 § 7.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.040 Recruitment—Career orientation services—Career counseling. (1) The department shall recruit program applicants and provide employment opportunities by:

(a) Notifying dislocated forest products workers who are receiving unemployment benefits, or dislocated forest products workers who have exhausted unemployment benefits, of their eligibility for the program.

(b) Establishing procedures for dislocated forest products workers to apply to the program.

(c) Developing a pool of workers eligible to enroll in the program.

(d) Contracting with the department of natural resources to provide employment opportunities for not less than two hundred eligible enrollees.

(2) The department shall provide career orientation services to enrollees in the program. The career orientation services shall include, but are not limited to, counseling on employment options and assistance in accessing retraining

programs, and assistance in accessing social service programs.

(3) The department shall provide at least eight hours of career counseling each week for program enrollees. [1991 c 315 § 8.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.050 Department of natural resources duties.

(1) The department of natural resources shall enroll candidates in the program from a pool of eligible workers developed by the department.

(2) The department of natural resources shall provide compensation for enrollees. [1991 c 315 § 9.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.900 Severability—1991 c 315. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 315 § 31.]

50.70.901 Conflict with federal requirements—1991 c 315. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1991 c 315 § 32.]

50.70.902 Effective date—1991 c 315. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 21, 1991], except for section 4 of this act, which shall take effect July 1, 1991. [1991 c 315 § 33.]

Chapter 50.72 RCW

YOUTHBUILD PROGRAM

Sections

50.72.010	Legislative findings.
50.72.020	Definitions.
50.72.030	Commissioner's duties—Education and employment training grants.
50.72.040	Education and employment training grants—Eligible activities.
50.72.050	Participation time limits—Educational services and activities requirement.
50.72.060	Grant applications—Requirements.
50.72.070	Grant applicants—Information required—Evaluation reports.

50.72.010 Legislative findings. (1) The legislature finds that there is a need to:

(a) Expand the supply of permanent affordable housing for homeless individuals, low and very low-income persons, and special need populations by utilizing the energies and talents of economically disadvantaged youth;

(b) Provide economically disadvantaged youth with opportunities for meaningful work and service to their communities in helping to meet the housing needs of homeless individuals, low and very low-income persons, and special need populations;

(c) Enable economically disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency; and

(d) Foster the development of leadership skills and commitment to community development among youth in designated community empowerment zones.

(2) The legislature declares that the purpose of the Washington youthbuild program is to:

(a) Help disadvantaged youth who have dropped out of school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in designated community empowerment zones; and

(b) Provide funding assistance to entities implementing programs that provide comprehensive education and skills training programs designed to lead to self-sufficiency for economically disadvantaged youth. [1994 sp.s. c 3 § 1.]

50.72.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a public or private nonprofit organization agency eligible to provide education and employment training under federal or state employment training programs.

(2) "Commissioner" means the commissioner of employment security.

(3) "Department" means the employment security department.

(4) "Low income" has the same meaning as in RCW 43.185A.010.

(5) "Participant" means an individual that:

(a) Is sixteen to twenty-four years of age, inclusive;

(b) Is or is a member of a very low-income household; and

(c) Is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

(6) "Very low income" means a person or household whose income is at or below fifty percent of the median family income, adjusted for household size, for the county where the household is located.

(7) "Youthbuild" means any program that provides disadvantaged youth with opportunities for employment, education, leadership development, entrepreneurial skills development, and training in the construction or rehabilitation of housing for special need populations, very low-income households, or low-income households. [1994 sp.s. c 3 § 2.]

50.72.030 Commissioner's duties—Education and employment training grants. The Washington youthbuild program is established within the department. The commissioner, in cooperation and consultation with the director of the department of community, trade, and economic development, shall:

(1) Make grants, up to the lesser of three hundred thousand dollars or twenty-five percent of the total costs of the youthbuild activities, to applicants eligible to provide education and employment training under federal or state employment training programs, for the purpose of carrying out a wide range of multidisciplinary activities and services to assist economically disadvantaged youth under the federal opportunities for youth: Youthbuild program (106 Stat. 3723; 42 U.S.C. Sec. 8011), or locally developed youthbuild-type programs for economically disadvantaged youth; and

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies and departments providing youth services to ensure that funds appropriated for the purposes of this chapter will be used to supplement funding from federal, state, local, or private sources. [1994 sp.s. c 3 § 3.]

50.72.040 Education and employment training grants—Eligible activities. (1) Grants made under this chapter shall be used to fund an applicant's activities to implement a comprehensive education and employment skills training program.

(2) Activities eligible for assistance under this chapter include:

(a) Education and job skills training services and activities that include:

(i) Work experience and skills training, coordinated to the maximum extent feasible, with preapprenticeship and

apprenticeship programs in construction and rehabilitation trades;

(ii) Services and activities designed to meet the educational needs of participants, including basic skills instruction and remedial education, bilingual education for participants with limited-English proficiency, secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent, and counseling and assistance in attaining postsecondary education and required financial aid;

(b) Counseling services and related activities;

(c) Activities designed to develop employment and leadership skills;

(d) Support services and need-based stipends necessary to enable the participant to participate in the program and to assist participants through support services in retaining employment;

(e) Wage stipends and benefits provided to participants; and

(f) Administrative costs of the applicant, not to exceed five percent of the amount of assistance provided under this chapter. [1994 sp.s. c 3 § 4.]

50.72.050 Participation time limits—Educational services and activities requirement. (1) An individual selected as a participant in the youthbuild program under this chapter may be offered full-time participation for a period of not less than six months and not more than twenty-four months.

(2) An applicant's program that is selected for funding under this chapter shall be structured so that fifty percent of the time spent by the participants in the youthbuild program is devoted to educational services and activities, such as those outlined in RCW 50.72.040. [1994 sp.s. c 3 § 5.]

50.72.060 Grant applications—Requirements. (1) An application for a grant under this chapter shall be submitted by the applicant in such form and in accordance with the requirements as determined by the commissioner.

(2) The application for a grant under this chapter shall contain at a minimum:

(a) The amount of the grant request and its proposed use;

(b) A description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs and other community groups;

(c) A description of the proposed site for the program;

(d) A description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

(e) A description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

(f) A description of the manner in which eligible participants will be recruited and selected, including a description of arrangements which will be made with federal or state agencies, community-based organizations, local school districts, the courts of jurisdiction for status and youth offenders,

shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women, including young women with dependent children;

(h) A description of how the proposed program will be coordinated with other federal, state, local, and private resources and programs, including vocational, adult, and bilingual education programs, and job training programs;

(i) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the level of journeyman or have served an apprenticeship through the Washington state apprenticeship training council;

(j) A description of the applicant's relationship with building contractor groups and trade unions regarding their involvement in training, and the relationship of the youth-build program with established apprenticeship and training programs;

(k) A description of activities that will be undertaken to develop the leadership skills of the participants;

(l) A description of the commitments for any additional resources to be made available to the local program from the applicant, from recipients of other federal, state, local, or private sources; and

(m) Other factors the commissioner deems necessary. [1994 sp.s. c 3 § 6.]

50.72.070 Grant applicants—Information required—Evaluation reports. (1) An applicant selected for funding under this chapter shall provide the department information on program and participant accomplishments. The information shall be provided in progress and final reports as requested by the department.

(2) A final evaluation report shall be prepared on individual programs at the time of their completion. The final evaluation report shall include, but is not limited to, information on the effectiveness of the program, the status of program participants, and recommendations on program administration at the state and local level. [1998 c 245 § 103; 1994 sp.s. c 3 § 7.]

Chapter 50.98 RCW

CONSTRUCTION

Sections

50.98.010	Saving clause—1945 c 35.
50.98.020	Appointments and regulations continued.
50.98.030	Actions commenced under prior laws.
50.98.040	Acts repealed.
50.98.050	Conflicting acts repealed.
50.98.060	Repealed acts not reenacted.
50.98.070	Separability of provisions—1945 c 35.
50.98.080	Effective date—1945 c 35.
50.98.100	Base year wages to include remuneration paid for previously uncovered services.
50.98.110	Compliance with federal unemployment tax act—Internal references—Interpretation.

50.98.010 Saving clause—1945 c 35. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby. [1945 c 35 § 184; no RRS.]

50.98.020 Appointments and regulations continued. The repeal of any acts or parts of acts by this act shall not affect the appointment or employment of any individual or salary, wages, compensation, powers or duties relating to such individual which would continue in effect except for such repeal. Rules and regulations adopted pursuant to the provisions of any acts or parts of acts repealed by this act consistent with the provisions of this act are not affected by such repeal and are hereby continued in full force and effect. [1945 c 35 § 185; no RRS.]

50.98.030 Actions commenced under prior laws. Any action or proceeding had or commenced in any civil or criminal cause prior to the effective date of this act may be prosecuted and continued with the same effect and under the same provisions of the law in effect at the time the action or proceeding was had or commenced: PROVIDED, That no appeal taken subsequent to the effective date of this act will be effective or valid unless there is compliance with the requirements of this act relating to appeals. [1945 c 35 § 186; no RRS.]

50.98.040 Acts repealed. The following acts and parts of acts relating to unemployment compensation are hereby repealed: Chapter 162, Session Laws of 1937; chapter 12, Session Laws of 1939; chapter 214, Session Laws of 1939; section 6 of chapter 201, Session Laws of 1941; chapter 253, Session Laws of 1941; chapter 65, Session Laws of 1943; chapter 127, Session Laws of 1943; chapter 226, Session Laws of 1943. [1945 c 35 § 188; no RRS.]

50.98.050 Conflicting acts repealed. All acts or parts of acts in conflict with or in derogation of this act or any part of this act are hereby repealed insofar as the same are in conflict with or in derogation of this act or any part thereof. [1945 c 35 § 189; no RRS.]

50.98.060 Repealed acts not reenacted. The repeal of any acts or parts of acts hereby shall not be construed to reenact or revive any act or parts of acts repealed or superseded by the acts or parts of acts hereby repealed. [1945 c 35 § 190; no RRS.]

50.98.070 Separability of provisions—1945 c 35. If any section, sentence, clause or phrase of this act should be held to be invalid or unconstitutional the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1945 c 35 § 191; no RRS.]

Severability—1951 c 265: "If any section, sentence, clause or word of this act shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this act, it being the intent of this legislative assembly to enact the remainder of this act notwithstanding such part so declared unconstitutional should or may be so declared." [1951 c 265 § 14.]

50.98.080 Effective date—1945 c 35. An emergency exists and this act is necessary for the preservation of the public peace, health, safety, and welfare and shall take effect on the first day of July, 1945. [1945 c 35 § 192; no RRS.]

50.98.100 Base year wages to include remuneration paid for previously uncovered services. (1) Effective with benefit years beginning on and after January 1, 1978, base year wages shall include remuneration paid for previously uncovered services: PROVIDED, That the maximum benefits payable to an individual as computed for the benefit year will be reduced to the extent that benefits were paid on the basis of identical calendar quarters of the previously uncovered services with respect to a claim filed by the individual under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974. Benefits will be paid, subject to the provisions of this title, based upon the previously uncovered services to the extent that the unemployment compensation trust fund will be reimbursed for the cost thereof by the federal government under section 121 of PL 94-566 and regulations published by the secretary of labor relating thereto.

(2) For the purposes of this section, the term "previously uncovered services" means services performed before January 1, 1978, which are not employment as defined in Title 50 RCW at any time during the one year period ending December 31, 1975, and which:

(a) Is agricultural labor as defined in RCW 50.04.150 and covered by RCW 50.04.155 or domestic services as defined in and covered by RCW 50.04.160; or

(b) Is service performed by an employee of this state or a political subdivision of this state newly covered by chapter 292, Laws of 1977 ex. sess. or by an employee of a nonprofit educational institution which is not an institution of higher education as provided in RCW 50.44.040(3).

(3) Any nonprofit organization or governmental entity electing to make payments in lieu of contributions shall not be liable to make payments with respect to benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2)(a) and (b) of this section to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566.

(4) Benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2)(a) and (b) of this section shall not be charged to the experience rating account of any contribution paying employer to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566. [1977 ex.s. c 292 § 20.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.98.110 Compliance with federal unemployment tax act—Internal references—Interpretation. Chapter 292, Laws of 1977 ex. sess. has been enacted to meet the requirements imposed by the federal unemployment tax act as amended by PL 94-566. Internal references in any section of chapter 292, Laws of 1977 ex. sess. to the provisions of that act are intended only to apply to those provisions as they existed as of *the effective date of chapter 292, Laws of 1977 ex. sess.

In view of the importance of compliance of chapter 292, Laws of 1977 ex. sess. with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Considerable weight has been given to the commentary contained in that document entitled "Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 PL 94-566", published by the United States department of labor, employment and training administration, and that commentary should be referred to when interpreting the provisions of chapter 292, Laws of 1977 ex. sess. [1977 ex.s. c 292 § 21.]

***Reviser's note:** For the effective dates of 1977 ex.s. c 292, see note following RCW 50.04.116.

Chapter 19.85 RCW

REGULATORY FAIRNESS ACT

Sections

19.85.011	Finding.
19.85.020	Definitions.
19.85.025	Application of chapter—Limited.
19.85.030	Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.
19.85.040	Small business economic impact statement—Purpose—Contents.
19.85.050	Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.
19.85.061	Compliance with federal law.
19.85.070	Small business economic impact statement—Notice of proposed rule.
19.85.900	Severability—1982 c 6.

Rules coordinator duties regarding business: RCW 43.17.310.

19.85.011 Finding. The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business. [1994 c 249 § 9.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

19.85.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply through this chapter.

(1) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

(3) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce. However, if the use of a four-digit standard industrial classification would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification. [2003 c 166 § 1; 1994 c 249 § 10; 1993 c 280 § 34; 1989 c 374 § 1; 1982 c 6 § 2.]

Effective date—1994 c 249 § 10: "Section 10 of this act shall take effect July 1, 1994." [1994 c 249 § 37.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

19.85.025 Application of chapter—Limited. (1) Unless an agency receives a written objection to the expedited

repeal of a rule, this chapter does not apply to a rule proposed for expedited repeal pursuant to *RCW 34.05.354. If an agency receives a written objection to expedited repeal of the rule, this chapter applies to the rule-making proceeding.

(2) This chapter does not apply to a rule proposed for expedited adoption under **RCW 34.05.230 (1) through (8), unless a written objection is timely filed with the agency and the objection is not withdrawn.

(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

(4) An agency is not required to prepare a separate small business economic impact statement under RCW 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business to the extent required by ***RCW 19.85.030(3). The portion of the analysis that meets the requirements of RCW 19.85.040 shall be filed with the code reviser and provided to any person requesting it in lieu of a separate small business economic impact statement. [1997 c 409 § 212; 1995 c 403 § 401.]

Reviser's note: *(1) RCW 34.05.354 was repealed by 2001 c 25 § 3. For expedited repeal, see RCW 34.05.353.

** (2) RCW 34.05.230 was amended by 2001 c 25 § 1, deleting subsections (1) through (8). For expedited adoption, see RCW 34.05.353.

*** (3) RCW 19.85.030 was amended by 2000 c 171 § 60, changing subsection (3) to subsection (2).

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.

(1) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (a) If the proposed rule will impose more than minor costs on businesses in an industry; or (b) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

An agency shall prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review

committee with the code reviser upon its completion before the adoption of the rule. An agency shall provide a copy of the small business economic impact statement to any person requesting it.

(2) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. Methods to reduce the costs on small businesses may include:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques. [2000 c 171 § 60; 1995 c 403 § 402; 1994 c 249 § 11. Prior: 1989 c 374 § 2; 1989 c 175 § 72; 1982 c 6 § 3.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication of small business economic impact statement in Washington State Register: RCW 34.08.020.

19.85.040 Small business economic impact statement—Purpose—Contents. (1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

- (a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by

*RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in *RCW 19.85.030(3);

(b) A description of how the agency will involve small businesses in the development of the rule; and

(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.

(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW 34.05.310(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business. [1995 c 403 § 403; 1994 c 249 § 12. Prior: 1989 c 374 § 3; 1989 c 175 § 73; 1982 c 6 § 4.]

***Reviser's note:** RCW 19.85.030 was amended by 2000 c 171 § 60, changing subsection (3) to subsection (2).

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication in Washington State Register: RCW 34.08.020.

19.85.050 Agency plan for review of business rules—Scope—Factors applicable to review—Annual list. (1) Within one year after June 10, 1982, each agency shall publish and deliver to the office of financial management and to all persons who make requests of the agency for a copy of a plan to periodically review all rules then in effect and which have been issued by the agency which have an economic impact on more than twenty percent of all industries or ten percent of the businesses in any one industry. Such plan may be amended by the agency at any time by publishing a revision to the review plan and delivering such revised plan to the office of financial management and to all persons who make requests of the agency for the plan. The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic impact on small businesses as described by this chapter. The plan shall provide for the review of all such agency rules in effect on June 10, 1982, within ten years of that date.

(2) In reviewing rules to minimize any significant economic impact of the rule on small businesses as described by this chapter, and in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and, to the extent feasible, with local governmental rules; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) Each year each agency shall publish a list of rules which are to be reviewed pursuant to this section during the next twelve months and deliver a copy of the list to the office of financial management and all persons who make requests of the agency for the list. The list shall include a brief description of the legal basis for each rule as described by RCW 34.05.360, and shall invite public comment upon the rule. [1989 c 175 § 74; 1982 c 6 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

19.85.061 Compliance with federal law. Unless so requested by a majority vote of the joint administrative rules review committee under RCW 19.85.030, an agency is not required to comply with this chapter when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations. In lieu of the statement required under RCW 19.85.030, the agency shall file a statement citing, with specificity, the federal statute or regulation with which the rule is being adopted to conform or comply, and describing the consequences to the state if the rule is not adopted. [1995 c 403 § 404.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

19.85.070 Small business economic impact statement—Notice of proposed rule. When any rule is proposed for which a small business economic impact statement is required, the adopting agency shall provide notice to small businesses of the proposed rule through any of the following:

- (1) Direct notification of known interested small businesses or trade organizations affected by the proposed rule; or
- (2) Providing information of the proposed rule making to publications likely to be obtained by small businesses of the types affected by the proposed rule. [1992 c 197 § 1.]

19.85.900 Severability—1982 c 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 6 § 11.]

Chapter 34.05 RCW

ADMINISTRATIVE PROCEDURE ACT

Sections

34.05.001 Legislative intent.

**PART I
GENERAL PROVISIONS**

34.05.010 Definitions.
 34.05.020 Savings—Authority of agencies to comply with chapter—
 Effect of subsequent legislation.
 34.05.030 Exclusions from chapter or parts of chapter.
 34.05.040 Operation of chapter if in conflict with federal law.
 34.05.050 Waiver.
 34.05.060 Informal settlements.
 34.05.070 Conversion of proceedings.
 34.05.080 Variation from time limits.
 34.05.090 Forest practices board—Emergency rules.
 34.05.100 Respectful language.

**PART II
PUBLIC ACCESS TO AGENCY RULES**

34.05.210 Code and register—Publication and distribution—Omissions,
 removals, revisions—Judicial notice.
 34.05.220 Rules for agency procedure—Indexes of opinions and state-
 ments.
 34.05.230 Interpretive and policy statements.
 34.05.240 Declaratory order by agency—Petition.
 34.05.250 Model rules of procedure.
 34.05.260 Electronic distribution.

**PART III
RULE-MAKING PROCEDURES**

34.05.310 Prenotice inquiry—Negotiated and pilot rules.
 34.05.312 Rules coordinator.
 34.05.313 Feasibility studies—Pilot projects.
 34.05.314 Rules development agenda.
 34.05.315 Rule-making docket.
 34.05.320 Notice of proposed rule—Contents—Distribution by
 agency—Institutions of higher education.
 34.05.322 Scope of rule-making authority.
 34.05.325 Public participation—Concise explanatory statement.
 34.05.328 Significant legislative rules, other selected rules.
 34.05.330 Petition for adoption, amendment, repeal—Agency action—
 Appeal.
 34.05.335 Withdrawal of proposal—Time and manner of adoption.
 34.05.340 Variance between proposed and final rule.
 34.05.345 Failure to give twenty days notice of intended action—Effect.
 34.05.350 Emergency rules and amendments.
 34.05.353 Expedited rule making.
 34.05.360 Order adopting rule, contents.
 34.05.362 Postadoption notice.
 34.05.365 Incorporation by reference.
 34.05.370 Rule-making file.
 34.05.375 Substantial compliance with procedures.
 34.05.380 Filing with code reviser—Register—Effective dates.
 34.05.385 Rules for rule making.
 34.05.390 Style, format, and numbering—Agency compliance.
 34.05.395 Format and style of amendatory and new sections—Failure to
 comply.

**PART IV
ADJUDICATIVE PROCEEDINGS**

34.05.410 Application of Part IV.
 34.05.413 Commencement—When required.
 34.05.416 Decision not to conduct an adjudication.
 34.05.419 Agency action on applications for adjudication.
 34.05.422 Rate changes, licenses.
 34.05.425 Presiding officers—Disqualification, substitution.
 34.05.428 Representation.
 34.05.431 Conference—Procedure and participation.
 34.05.434 Notice of hearing.
 34.05.437 Pleadings, briefs, motions, service.
 34.05.440 Default.

34.05.443 Intervention.
 34.05.446 Subpoenas, discovery, and protective orders.
 34.05.449 Procedure at hearing.
 34.05.452 Rules of evidence—Cross-examination.
 34.05.455 Ex parte communications.
 34.05.458 Separation of functions.
 34.05.461 Entry of orders.
 34.05.464 Review of initial orders.
 34.05.467 Stay.
 34.05.470 Reconsideration.
 34.05.473 Effectiveness of orders.
 34.05.476 Agency record.
 34.05.479 Emergency adjudicative proceedings.
 34.05.4791 Secure community transition facility—Proceeding concerning
 public safety measures.
 34.05.482 Brief adjudicative proceedings—Applicability.
 34.05.485 Brief adjudicative proceedings—Procedure.
 34.05.488 Brief proceedings—Administrative review—Applicability.
 34.05.491 Brief proceedings—Administrative review—Procedures.
 34.05.494 Agency record in brief proceedings.

**PART V
JUDICIAL REVIEW AND CIVIL ENFORCEMENT**

34.05.510 Relationship between this chapter and other judicial review
 authority.
 34.05.514 Petition for review—Where filed.
 34.05.518 Direct review by court of appeals.
 34.05.522 Refusal of review by court of appeals.
 34.05.526 Appellate review by supreme court or court of appeals.
 34.05.530 Standing.
 34.05.534 Exhaustion of administrative remedies.
 34.05.542 Time for filing petition for review.
 34.05.546 Petition for review—Contents.
 34.05.550 Stay and other temporary remedies.
 34.05.554 Limitation on new issues.
 34.05.558 Judicial review of facts confined to record.
 34.05.562 New evidence taken by court or agency.
 34.05.566 Agency record for review—Costs.
 34.05.570 Judicial review.
 34.05.574 Type of relief.
 34.05.578 Petition by agency for enforcement.
 34.05.582 Petition by others for enforcement.
 34.05.586 Defenses, limitations on.
 34.05.588 Enforcement of agency subpoena.
 34.05.590 Incorporation of other judicial review provisions.
 34.05.594 Review by higher court.
 34.05.598 Frivolous petitions.

**PART VI
LEGISLATIVE REVIEW**

34.05.610 Joint administrative rules review committee—Members—
 Appointment—Terms—Vacancies.
 34.05.620 Review of proposed rules—Notice.
 34.05.630 Review of existing rules—Policy and interpretive statements,
 etc.—Notice—Hearing.
 34.05.640 Committee objections to agency intended action—Statement
 in register and WAC—Suspension of rule.
 34.05.650 Recommendations by committee to legislature.
 34.05.655 Petition for review.
 34.05.660 Review and objection procedures—No presumption estab-
 lished.
 34.05.665 Submission of rule for review—State employees protected.
 34.05.671 Reports—Advisory boards—Staff.
 34.05.675 Inspection of properties—Oaths, subpoenas, witnesses, depo-
 sitions.
 34.05.681 Enforcement—Committee subpoena—Refusal to testify.

**PART IX
TECHNICAL PROVISIONS**

34.05.900 Captions and headings.
 34.05.901 Severability—1988 c 288.
 34.05.902 Effective date—Application—1988 c 288.

34.05.903 Severability—1998 c 280.

Nonbinding effect of unpublished rules and procedures: RCW 42.17.250.

34.05.001 Legislative intent. The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before July 1, 1989, shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts. [1988 c 288 § 18.]

PART I GENERAL PROVISIONS

34.05.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW 34.05.260. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company. [1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

Effective dates—Severability—1992 c 44: See RCW 42.41.901 and 42.41.902.

Effective dates—1989 c 175: "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 § 186.]

Severability—1982 c 10: See note following RCW 6.13.080.

Legislative affirmation—1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

Severability—1981 c 324: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 324 § 18.]

34.05.020 Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation. Nothing in this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly. [1988 c 288 § 102; 1967 c 237 § 24. Formerly RCW 34.04.940.]

34.05.030 Exclusions from chapter or parts of chapter. (Effective until July 1, 2006.) (1) This chapter shall not apply to:

(a) The state militia, or
 (b) The board of clemency and pardons, or
 (c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the Washington personnel resources board, the director of personnel, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW.

(5) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the Administrative Procedure Act, shall be subject to the entire act. [1994 c 39 § 1; 1993 c 281 § 15; 1989 c 175 § 2; 1988 c 288 § 103; 1984 c 141 § 8; 1982 c 221 § 6; 1981 c 64 § 2; 1979 c 158 § 90; 1971 ex.s. c 57 § 17; 1971 c 21 § 1; 1967 ex.s. c 71 § 1; 1967 c 237 § 7; 1963 c 237 § 1; 1959 c 234 § 15. Formerly RCW 34.04.150.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.030 Exclusions from chapter or parts of chapter. (*Effective July 1, 2006.*) (1) This chapter shall not apply to:

- (a) The state militia, or
- (b) The board of clemency and pardons, or
- (c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the Washington personnel resources board or the director of personnel; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW.

(5) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the Administrative Procedure Act, shall be subject to the entire act. [2002 c 354 § 225; 1994 c 39 § 1; 1993 c 281 § 15; 1989 c 175 § 2; 1988 c 288 § 103; 1984 c 141 § 8; 1982 c 221 § 6; 1981 c 64 § 2; 1979 c 158 § 90; 1971 ex.s. c 57 § 17; 1971 c 21 § 1; 1967 ex.s. c 71 § 1; 1967 c 237 § 7; 1963 c 237 § 1; 1959 c 234 § 15. Formerly RCW 34.04.150.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.040 Operation of chapter if in conflict with federal law. If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. [1988 c 288 § 104; 1959 c 234 § 19. Formerly RCW 34.04.930.]

34.05.050 Waiver. Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter. [1988 c 288 § 105.]

34.05.060 Informal settlements. Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter. [1988 c 288 § 106.]

34.05.070 Conversion of proceedings. (1) If it becomes apparent during the course of an adjudicative or rule-making proceeding undertaken pursuant to this chapter that another form of proceeding under this chapter is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, on his or her own motion or on the motion of any party, the presiding officer or other official responsible for the original proceeding shall advise the parties of necessary steps for conversion and, if within the official's power, commence the new proceeding. If the agency refuses to convert to another proceeding, that decision is not subject to judicial review. Commencement of the new proceeding shall be accomplished pursuant to the procedural rules of the new proceeding, except that elements already performed need not be repeated.

(2) If appropriate, a new proceeding may be commenced independently of the original proceeding or may replace the original proceeding.

(3) Conversion to a replacement proceeding shall not be undertaken if the rights of any party will be substantially prejudiced.

(4) To the extent feasible the record of the original proceeding shall be included in the record of a replacement proceeding.

(5) The time of commencement of a replacement proceeding shall be considered to be the time of commencement of the original proceeding. [1988 c 288 § 107.]

34.05.080 Variation from time limits. (1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. The notice may be given by the presiding or reviewing officer involved in the proceeding.

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor. [1989 c 175 § 3; 1988 c 288 § 108.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.090 Forest practices board—Emergency rules.

Emergency rules adopted by the forest practices board pertaining to forest practices and the protection of aquatic resources are subject to this chapter to the extent provided in RCW 76.09.055. [1999 sp.s. c 4 § 202.]

Effective date—1999 sp.s. c 4 §§ 201, 202, and 203: See note following RCW 76.09.055.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

34.05.100 Respectful language. (1) All agency orders creating new rules, or amending existing rules, shall be formulated in accordance with the requirements of RCW 44.04.280 regarding the use of respectful language.

(2) No agency rule is invalid because it does not comply with this section. [2004 c 175 § 2.]

PART II

PUBLIC ACCESS TO AGENCY RULES

34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice.

(1) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall

be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Registers and compilations shall be made available, in written form to (a) state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, (b) to the secretary of the senate and the chief clerk of the house for committee use, as required, but not to exceed the number of standing committees in each body, (c) to county boards of law library trustees and to the Olympia representatives of the Associated Press and the United Press International without request, free of charge, and (d) to other persons at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations for use and inspection as provided in *RCW 27.24.060.

(9) Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section. [1988 c 288 § 201; 1982 1st ex.s. c 32 § 7; 1980 c 186 § 12; 1977 ex.s. c 240 § 9; 1959 c 234 § 5. Formerly RCW 34.04.050.]

***Reviser's note:** RCW 27.24.060 was repealed by 1992 c 62 § 9, effective April 1, 1992.

Severability—1980 c 186: See note following RCW 34.05.320.

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

Nonbinding effect of unpublished rules and procedures: RCW 42.17.250.

34.05.220 Rules for agency procedure—Indexes of opinions and statements. (1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this

chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

(5) To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply.

(6) The departments of employment security, labor and industries, ecology, and revenue shall develop and use a notification process to communicate information to the public regarding the postadoption notice required by RCW 34.05.362. [2003 c 246 § 2; 1994 c 249 § 24; 1989 c 175 § 4; 1988 c 288 § 202; 1981 c 67 § 13; 1967 c 237 § 2; 1959 c 234 § 2. Formerly RCW 34.04.020.]

Finding—2003 c 246: See note following RCW 34.05.362.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.05.230 Interpretive and policy statements. (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the

petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

(3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster periodically and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

(4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained. [2004 c 31 § 3; 2001 c 25 § 1; 1997 c 409 § 202; 1996 c 206 § 12; 1995 c 403 § 702; 1988 c 288 § 203.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Findings—1996 c 206: See note following RCW 43.05.030.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.240 Declaratory order by agency—Petition.

(1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions. [1988 c 288 § 204; 1959 c 234 § 8. Formerly RCW 34.04.080.]

34.05.250 Model rules of procedure. The chief administrative law judge shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules shall deal with all general functions and duties performed in common by the various agencies. Each agency shall adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from the model rules shall include in the order of adoption a finding stating the reasons for variance. [1988 c 288 § 205.]

34.05.260 Electronic distribution. (1) In order to provide the greatest possible access to agency documents to the most people, agencies are encouraged to make their rule, interpretive, and policy information available through electronic distribution as well as through the regular mail. Agencies that have the capacity to transmit electronically may ask persons who are on mailing lists or rosters for copies of interpretive statements, policy statements, preproposal statements of inquiry, and other similar notices whether they would like to receive the notices electronically.

(2) Electronic distribution to persons who request it may substitute for mailed copies related to rule making or policy or interpretive statements. If a notice is distributed electronically, the agency is not required to transmit the actual notice form but must send all the information contained in the notice.

(3) Agencies which maintain mailing lists or rosters for any notices relating to rule making or policy or interpretive statements may establish different rosters or lists by general subject area. [1997 c 126 § 1.]

PART III RULE-MAKING PROCEDURES

34.05.310 Prenotice inquiry—Negotiated and pilot rules. (1) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies shall solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency shall prepare a statement of inquiry that:

(a) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

(b) Discusses why rules on this subject may be needed and what they might accomplish;

(c) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(d) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(e) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

The statement of inquiry shall be filed with the code reviser for publication in the state register at least thirty days before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, shall be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) This section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees or rates pursuant to legislative standards; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit. [2004 c 31 § 1; 1995 c 403 § 301; 1994 c 249 § 1; 1993 c 202 § 2; 1989 c 175 § 5; 1988 c 288 § 301.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—1994 c 249: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 249 § 38.]

Application—1994 c 249: "This act applies prospectively only and not retroactively." [1994 c 249 § 36.]

Finding—Intent—1993 c 202: "The legislature finds that while the 1988 Administrative Procedure Act expanded public participation in the agency rule-making process, there continue to be instances when participants have developed adversarial relationships with each other, resulting in the inability to identify all of the issues, the failure to focus on solutions to problems, unnecessary delays, litigation, and added cost to the agency, affected parties, and the public in general.

When interested parties work together, it is possible to negotiate development of a rule that is acceptable to all affected, and that conforms to the intent of the statute the rule is intended to implement.

After a rule is adopted, unanticipated negative impacts may emerge. Examples include excessive costs of administration for the agency and compliance by affected parties, technical conditions that may be physically or economically infeasible to meet, problems of interpretation due to lack of clarity, and reporting requirements that duplicate or conflict with those already in place.

It is therefore the intent of the legislature to encourage flexible approaches to developing administrative rules, including but not limited to negotiated rule making and a process for testing the feasibility of adopted rules, often called the pilot rule process. However, nothing in chapter 202, Laws of 1993 shall be construed to create any mandatory duty for an agency to use the procedures in RCW 34.05.310 or 34.05.313 in any particular instance of rule making. Agencies shall determine, in their discretion, when it is appropriate to use these procedures." [1993 c 202 § 1.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Rules coordinator duties regarding business: RCW 43.17.310.

(2004 Ed.)

34.05.312 Rules coordinator. Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency. [2003 c 246 § 4; 1993 c 202 § 3.]

Finding—2003 c 246: See note following RCW 34.05.362.

Finding—Intent—1993 c 202: See note following RCW 34.05.310.

34.05.313 Feasibility studies—Pilot projects. (1) During the development of a rule or after its adoption, an agency may develop methods for measuring or testing the feasibility of complying with or administering the rule and for identifying simple, efficient, and economical alternatives for achieving the goal of the rule. A pilot project shall include public notice, participation by volunteers who are or will be subject to the rule, a high level of involvement from agency management, reasonable completion dates, and a process by which one or more parties may withdraw from the process or the process may be terminated. Volunteers who agree to test a rule and attempt to meet the requirements of the draft rule, to report periodically to the proposing agency on the extent of their ability to meet the requirements of the draft rule, and to make recommendations for improving the draft rule shall not be obligated to comply fully with the rule being tested nor be subject to any enforcement action or other sanction for failing to comply with the requirements of the draft rule.

(2) An agency conducting a pilot rule project authorized under subsection (1) of this section may waive one or more provisions of agency rules otherwise applicable to participants in such a pilot project if the agency first determines that such a waiver is in the public interest and necessary to conduct the project. Such a waiver may be only for a stated period of time, not to exceed the duration of the project.

(3) The findings of the pilot project should be widely shared and, where appropriate, adopted as amendments to the rule.

(4) If an agency conducts a pilot rule project in lieu of meeting the requirements of the regulatory fairness act, chapter 19.85 RCW, the agency shall ensure the following conditions are met:

(a) If over ten small businesses are affected, there shall be at least ten small businesses in the test group and at least one-half of the volunteers participating in the pilot test group shall be small businesses.

(b)(i) If there are at least one hundred businesses affected, the participation by small businesses in the test group shall be as follows:

(A) Not less than twenty percent of the small businesses must employ twenty-six to fifty employees;

(B) Not less than twenty percent of the small businesses must employ eleven to twenty-six employees; and

(C) Not less than twenty percent of the small businesses must employ zero to ten employees.

(ii) If there do not exist a sufficient number of small businesses in each size category set forth in (b)(i) of this subsection willing to participate in the pilot project to meet the minimum requirements of that subsection, then the agency must comply with this section to the maximum extent practicable.

(c) The agency may not terminate the pilot project before completion.

(d) Before filing the notice of proposed rule making pursuant to RCW 34.05.320, the agency must prepare a report of the pilot rule project that includes:

(i) A description of the difficulties small businesses had in complying with the pilot rule;

(ii) A list of the recommended revisions to the rule to make compliance with the rule easier or to reduce the cost of compliance with the rule by the small businesses participating in the pilot rule project;

(iii) A written statement explaining the options it considered to resolve each of the difficulties described and a statement explaining its reasons for not including a recommendation by the pilot test group to revise the rule; and

(iv) If the agency was unable to meet the requirements set forth in (b)(i) of this subsection, a written explanation of why it was unable to do so and the steps the agency took to include small businesses in the pilot project. [1995 c 403 § 303; 1993 c 202 § 4.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Finding—Intent—1993 c 202: See note following RCW 34.05.310.

34.05.314 Rules development agenda. Each state agency shall prepare a semiannual agenda for rules under development. The agency shall file the agenda with the code reviser for publication in the state register not later than January 31st and July 31st of each year. Not later than three days after its publication in the state register, the agency shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda. The agency shall also submit the agenda to the director of financial management, the rules review committee, and any other state agency that may reasonably be expected to have an interest in the subject of rules that will be developed. [1997 c 409 § 206.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

34.05.315 Rule-making docket. (1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until the proposed rule is withdrawn under RCW 34.05.335 or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(b) The subject of the proposed rule;

(c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(d) The place where written submissions about the proposed rule may be inspected;

(e) The time during which written submissions will be accepted;

(f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, publication, and its effective date. [1989 c 175 § 6; 1988 c 288 § 302.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.320 Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education. (1)

At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make, and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a citation to such law or court decision;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement;

(k) A statement indicating whether RCW 34.05.328 applies to the rule adoption; and

(l) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.

(2)(a) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection. Except as

provided in (b) of this subsection, the agency shall forward three copies of the notice to the rules review committee.

(b) A pilot of at least ten agencies, including the departments of labor and industries, fish and wildlife, revenue, ecology, retirement systems, and health, shall file the copies required under this subsection, as well as under RCW 34.05.350 and 34.05.353, with the rules review committee electronically for a period of four years from June 10, 2004. The office of regulatory assistance shall negotiate the details of the pilot among the agencies, the legislature, and the code reviser.

(3) No later than three days after its publication in the state register, the agency shall cause either a copy of the notice of proposed rule adoption, or a summary of the information contained on the notice, to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing. [2004 c 31 § 2; 2003 c 165 § 1; 1995 c 403 § 302; 1994 c 249 § 14; 1992 c 197 § 8; 1989 c 175 § 7; 1988 c 288 § 303; 1982 c 221 § 2; 1982 c 6 § 7; 1980 c 186 § 10; 1977 ex.s. c 84 § 1. Formerly RCW 34.04.045.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1982 c 6: See RCW 19.85.900.

Severability—1980 c 186: "If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 186 § 29.]

Expedited adoption: RCW 34.05.353.

Small business economic impact statement—Purpose—Contents: RCW 19.85.040.

34.05.322 Scope of rule-making authority. For rules implementing statutes enacted after July 23, 1995, an agency may not rely solely on the section of law stating a statute's intent or purpose, or on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for its statutory authority to adopt the rule. An agency may use the statement of intent or purpose or the agency enabling provisions to interpret ambiguities in a statute's other provisions. [1995 c 403 § 118.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.325 Public participation—Concise explanatory statement. (1) The agency shall make a good faith effort to insure that the information on the proposed rule published

pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.17 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

- (i) Identifying the agency's reasons for adopting the rule;
- (ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment. [1998 c 125 § 1; 1995 c 403 § 304; 1994 c 249 § 7; 1992 c 57 § 1; 1988 c 288 § 304.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

34.05.328 Significant legislative rules, other selected rules. (1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that 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;

(e) Determine, 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;

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

(g) Determine 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;

(h) Determine 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; and

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

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the *business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washing-

ton state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(2004 Ed.)

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section. [2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

Reviser's note: *(1) The business assistance center and its powers and duties were terminated June 30, 1995. RCW 43.31.083, 43.31.085, 43.31.087, and 43.31.089 were repealed by 1993 c 280 § 81, effective June 30, 1996.

(2) This section was amended by 2003 c 39 § 13 and by 2003 c 165 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Short title—Intent—1995 c 403: "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 § 1.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: "Sections 201, 301 through 305, 401 through 405, and 801 of this act shall apply to all rule making for which a statement of proposed rule making under RCW 34.05.320 is filed after July 23, 1995." [1995 c 403 § 1102.]

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Expedited adoption: RCW 34.05.353.

34.05.330 Petition for adoption, amendment, repeal—Agency action—Appeal. (1) Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The office of financial management shall prescribe by rule the format for such petitions and the procedure for their submission, consideration, and disposition and provide a standard form that may be used to petition any agency. Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.

(2) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, and the petition alleges that the rule is not within the intent of the legislature or was not adopted in accordance with all applicable provisions of law, the person may petition for review of the rule by the joint administrative rules review committee under RCW 34.05.655.

(3) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, the petitioner, within thirty days of the denial, may appeal the denial to the governor. The governor shall immediately file notice of the appeal with the code reviser for publication in the Washington state register. Within forty-five days after receiving the appeal, the governor shall either (a) deny the petition in writing, stating (i) his or her reasons for the denial, specifically addressing the concerns raised by the petitioner, and, (ii) where appropriate, the alternative means by which he or she will address the concerns raised by the petitioner; (b) for agencies listed in RCW 43.17.010, direct the agency to initiate rule-making proceedings in accordance with this chapter; or (c) for agencies not listed in RCW 43.17.010, recommend that the agency initiate rule-making proceedings in accordance with this chapter. The governor's response to the appeal shall be published in the Washington state register and copies shall be submitted to the chief clerk of the house of representatives and the secretary of the senate.

(4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

- (a) Whether the rule is authorized;
- (b) Whether the rule is needed;
- (c) Whether the rule conflicts with or duplicates other federal, state, or local laws;
- (d) Whether alternatives to the rule exist that will serve the same purpose at less cost;
- (e) Whether the rule applies differently to public and private entities;
- (f) Whether the rule serves the purposes for which it was adopted;
- (g) Whether the costs imposed by the rule are unreasonable;
- (h) Whether the rule is clearly and simply stated;
- (i) Whether the rule is different than a federal law applicable to the same activity or subject matter without adequate justification; and

(j) Whether the rule was adopted according to all applicable provisions of law.

(5) The department of community, trade, and economic development and the office of financial management shall coordinate efforts among agencies to inform the public about the existence of this rules review process.

(6) The office of financial management shall initiate the rule making required by subsection (1) of this section by September 1, 1995. [1998 c 280 § 5; 1996 c 318 § 1; 1995 c 403 § 703; 1988 c 288 § 305; 1967 c 237 § 5; 1959 c 234 § 6. Formerly RCW 34.04.060.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.335 Withdrawal of proposal—Time and manner of adoption. (1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with RCW 34.05.320.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted and filed with the code reviser within one hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the proposed rule without refileing it in accordance with RCW 34.05.320. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register. [1989 c 175 § 8; 1988 c 288 § 306; 1980 c 186 § 11. Formerly RCW 34.04.048.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1980 c 186: See note following RCW 34.05.320.

34.05.340 Variance between proposed and final rule.

(1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may withdraw the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and RCW 34.05.330, the agency shall initiate rule-making proceedings upon the proposed amendments within the time provided in RCW 34.05.330. [1989 c 175 § 9; 1988 c 288 § 307.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.345 Failure to give twenty days notice of intended action—Effect. Except for emergency rules adopted under RCW 34.05.350, when twenty days notice of intended action to adopt, amend, or repeal a rule has not been published in the state register, as required by RCW 34.05.320, the code reviser shall not publish such rule and such rule shall not be effective for any purpose. [1988 c 288 § 308; 1967 c 237 § 4. Formerly RCW 34.04.027.]

34.05.350 Emergency rules and amendments. (1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; or

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is

(2004 Ed.)

specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule.

(4) In adopting an emergency rule, the agency shall comply with *section 4 of this act or provide a written explanation for its failure to do so. [1994 c 249 § 3; 1989 c 175 § 10; 1988 c 288 § 309; 1981 c 324 § 4; 1977 ex.s. c 240 § 8; 1959 c 234 § 3. Formerly RCW 34.04.030.]

***Reviser's note:** The governor vetoed 1994 c 249 § 4.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

34.05.353 Expedited rule making. (1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(b) The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(d) The content of the proposed rules is explicitly and specifically dictated by statute;

(e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process

that involved substantial participation by interested parties before the development of the proposed rule; or

(f) The proposed rule is being amended after a review under RCW 34.05.328.

(2) An agency may file notice for the expedited repeal of rules under the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

(b) The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

(c) The rule is no longer necessary because of changed circumstances; or

(d) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

(3) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule making. The notice for the expedited rule making must contain a statement in at least ten-point type, that is substantially in the following form:

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

(4) The agency shall send either a copy of the notice of the proposed expedited rule making, or a summary of the information on the notice, to any person who has requested notification of proposals for expedited rule making or of regular agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (3) of this section. The notice must also include an explanation of the reasons the agency believes the expedited rule-making process is appropriate.

(5) The code reviser shall publish the text of all rules proposed for expedited adoption, and the citation and caption of all rules proposed for expedited repeal, along with the notice required in this section in a separate section of the Washington State Register. Once the notice of expedited rule making has been published in the Washington State Register, the only changes that an agency may make in the noticed materials before their final adoption or repeal are to correct typographical errors.

(6) Any person may file a written objection to the expedited rule making. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited rule making may withdraw the objection.

(7) If no written objections to the expedited rule making are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting or repealing the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.

(8) If a written notice of objection to the expedited rule making is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule-making proceedings in accordance with this chapter.

(9) As used in this section, "expedited rule making" includes both the expedited adoption of rules and the expedited repeal of rules. [2004 c 31 § 4; 2001 c 25 § 2.]

34.05.360 Order adopting rule, contents. The order of adoption by which each rule is adopted by an agency shall contain all of the following:

- (1) The date the agency adopted the rule;
- (2) A concise statement of the purpose of the rule;
- (3) A reference to all rules repealed, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a precondition to adoption or effectiveness of the rule; and
- (6) The effective date of the rule if other than that specified in RCW 34.05.380(2). [1988 c 288 § 311.]

34.05.362 Postadoption notice. Either before or within two hundred days after the effective date of an adopted rule that imposes additional requirements on businesses the violation of which subjects the business to a penalty, assessment, or administrative sanction, an agency identified in RCW 34.05.220(6) shall notify businesses affected by the rule of the requirements of the rule and how to obtain technical assistance to comply. Notification must be provided by e-mail, if possible, to every person identified to receive the postadoption notice under RCW 34.05.220(6).

The notification must announce the rule change, briefly summarize the rule change, refer to appeal procedures under RCW 34.05.330, and include a contact for more information. Failure to notify a specific business under this section does not invalidate a rule or waive the requirement to comply with the rule. The requirements of this section do not apply to emergency rules adopted under RCW 34.05.350. [2003 c 246 § 3.]

Finding—2003 c 246: "The legislature finds that many businesses in the state are frustrated by the complexity of the regulatory system. The Washington Administrative Code containing agency rules now fills twelve volumes, and appears to be growing each year. While the vast majority of businesses make a good faith attempt to comply with applicable laws and rules, many find it extremely difficult to keep up with agencies' issuance of new rules and requirements. Therefore, state agencies are directed to make a good faith attempt to notify businesses affected by rule changes that may subject noncomplying businesses to penalties." [2003 c 246 § 1.]

34.05.365 Incorporation by reference. An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available. [1988 c 288 § 312.]

34.05.370 Rule-making file. (1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) A list of citations to all notices in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

(f) Citations to data, factual information, studies, or reports on which the agency relies in the adoption of the rule,

(2004 Ed.)

indicating where such data, factual information, studies, or reports are available for review by the public, but this subsection (2)(f) does not require the agency to include in the rule-making file any data, factual information, studies, or reports gathered pursuant to chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(g) The concise explanatory statement required by RCW 34.05.325(6); and

(h) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule. [1998 c 280 § 7; 1996 c 102 § 2; 1995 c 403 § 801; 1994 c 249 § 2; 1988 c 288 § 313.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

34.05.375 Substantial compliance with procedures. No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule. [1988 c 288 § 314.]

34.05.380 Filing with code reviser—Register—Effective dates. (1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent register of filed rules open to public inspection. In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the

agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it. [1989 c 175 § 11; 1988 c 288 § 315; 1987 c 505 § 17; 1980 c 87 § 11; 1959 c 234 § 4. Formerly RCW 34.04.040.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.385 Rules for rule making. The code reviser may adopt rules for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various agencies in the drafting of such rules and notices. [1988 c 288 § 316; 1967 c 237 § 13. Formerly RCW 34.04.055.]

34.05.390 Style, format, and numbering—Agency compliance. After the rules of an agency have been published by the code reviser:

(1) All agency orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington Administrative Code;

(2) Any subsequent printing or reprinting of such rules shall be printed in the style and format (including the numbering system) of such code; and

(3) Amendments of previously adopted rules shall incorporate any editorial corrections made by the code reviser. [1988 c 288 § 317; 1967 c 237 § 14. Formerly RCW 34.04.057.]

34.05.395 Format and style of amendatory and new sections—Failure to comply. (1) Rules proposed or adopted by an agency pursuant to this chapter that amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. A new section shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any agency to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the register published pursuant to RCW 34.05.210(3), include

the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with RCW 34.05.210. [1988 c 288 § 318; 1980 c 186 § 14; 1977 c 19 § 1. Formerly RCW 34.04.058.]

Severability—1980 c 186: See note following RCW 34.05.320.

PART IV ADJUDICATIVE PROCEEDINGS

34.05.410 Application of Part IV. (1) Adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476, except as otherwise provided:

(a) By a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in RCW 34.05.482 for those proceedings;

(b) By RCW 34.05.479 pertaining to emergency adjudicative proceedings; or

(c) By RCW 34.05.240 pertaining to declaratory proceedings.

(2) RCW 34.05.410 through 34.05.494 do not apply to rule-making proceedings unless another statute expressly so requires. [1988 c 288 § 401.]

34.05.413 Commencement—When required. (1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding. An agency may require by rule that an application be in writing and that it be filed at a specific address, in a specified manner, and within specified time limits. The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted. [1989 c 175 § 12; 1988 c 288 § 402.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.416 Decision not to conduct an adjudication. If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall furnish the

applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant. [1988 c 288 § 403.]

34.05.419 Agency action on applications for adjudication. After receipt of an application for an adjudicative proceeding, other than a declaratory order, an agency shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within ninety days after receipt of the application or of the response to a timely request made by the agency under subsection (2) of this section, the agency shall do one of the following:

(a) Approve or deny the application, in whole or in part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with RCW 34.05.416;

(2) Within thirty days after receipt of the application, the agency shall examine the application, notify the applicant of any obvious errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, mailing address, and telephone number of an office that may be contacted regarding the application;

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time limits provided in subsection (1) of this section. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application. [1988 c 288 § 404.]

34.05.422 Rate changes, licenses. (1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be

refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. [1989 c 175 § 13; 1988 c 288 § 405; 1980 c 33 § 1; 1967 c 237 § 8. Formerly RCW 34.04.170.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.425 Presiding officers—Disqualification, substitution. (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

(8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual. [1989 c 175 § 14; 1988 c 288 § 406.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.428 Representation. (1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative. [1989 c 175 § 15; 1988 c 288 § 407.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.431 Conference—Procedure and participation.

(1) Agencies may hold prehearing or other conferences for the settlement or simplification of issues. Every agency shall by rule describe the conditions under which and the manner in which conferences are to be held.

(2) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the conference may be conducted by telephone, television, or other electronic means. Each participant in the conference must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place. [1988 c 288 § 408.]

34.05.434 Notice of hearing. (1) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(2) The notice shall include:

(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;

(c) The official file or other reference number and the name of the proceeding;

(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(e) A statement of the time, place and nature of the proceeding;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of the statutes and rules involved;

(h) A short and plain statement of the matters asserted by the agency; and

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is served, the initial notice may be limited to a statement of the

issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency. [1988 c 288 § 409; 1980 c 31 § 1; 1967 c 237 § 9; 1959 c 234 § 9. Formerly RCW 34.04.090.]

34.05.437 Pleadings, briefs, motions, service. (1) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.

(2) At appropriate stages of the proceedings, the presiding officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) A party that files a pleading, brief, or other paper with the agency or presiding officer shall serve copies on all other parties, unless a different procedure is specified by agency rule. [1988 c 288 § 410.]

34.05.440 Default. (1) Failure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party's right to an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any.

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. [1989 c 175 § 16; 1988 c 288 § 411.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.443 Intervention. (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties. [1988 c 288 § 412.]

34.05.446 Subpoenas, discovery, and protective orders. (1) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.

(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.

(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) Discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) Subpoenas issued under this section may be enforced under RCW 34.05.588(1).

(6) The subpoena powers created by this section shall be statewide in effect.

(7) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The person initiating an adjudicatory proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena. [1989 c 175 § 17; 1988 c 288 § 413; 1967 c 237 § 10. Formerly RCW 34.04.105.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.449 Procedure at hearing. (1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency. [1989 c 175 § 18; 1988 c 288 § 414.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.452 Rules of evidence—Cross-examination.

(1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized

organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed. [1988 c 288 § 415; 1959 c 234 § 10. Formerly RCW 34.04.100.]

34.05.455 Ex parte communications. (1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communica-

tion, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section. [1988 c 288 § 416.]

34.05.458 Separation of functions. (1) A person who has served as investigator, prosecutor, or advocate in an adjudicative proceeding or in its preadjudicative stage, or one who is subject to the authority, direction, or discretion of such a person, may not serve as a presiding officer in the same proceeding.

(2) A person, including an agency head, who has participated in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or assist or advise a presiding officer in the same proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425.

(3) A person may serve as presiding officer at successive stages of the same adjudicative proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425. [1988 c 288 § 417.]

34.05.461 Entry of orders. (1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if appli-

cable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8)(a) Except as otherwise provided in (b) of this subsection, initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(b) This subsection does not apply to the final order of the shorelines hearings board on appeal under RCW 90.58.180(3).

(9) The presiding officer shall cause copies of the order to be served on each party and the agency. [1995 c 347 § 312; 1989 c 175 § 19; 1988 c 288 § 418.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.464 Review of initial orders. (1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party. [1989 c 175 § 20; 1988 c 288 § 419.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.467 Stay. A party may submit to the presiding or reviewing officer, as is appropriate to the stage of the proceeding, a petition for stay of effectiveness of a final order within ten days of its service unless otherwise provided by statute or stated in the final order. Disposition of the petition for stay shall be made by the presiding officer, reviewing officer, or agency head as provided by agency rule. Disposition may be made either before or after the effective date of the final order. Disposition denying a stay is not subject to judicial review. [1988 c 288 § 420.]

34.05.470 Reconsideration. (1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for

judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section is not subject to judicial review. [1989 c 175 § 21; 1988 c 288 § 421.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.473 Effectiveness of orders. (1) Unless a later date is stated in an order or a stay is granted, an order is effective when entered, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with RCW 34.05.461 is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with RCW 34.05.479. [1989 c 175 § 22; 1988 c 288 § 422.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.476 Agency record. (1) An agency shall maintain an official record of each adjudicative proceeding under this chapter.

(2) The agency record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Proffers of proof and objections and rulings thereon;

(g) Proposed findings, requested orders, and exceptions;

(h) The recording prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) Any final order, initial order, or order on reconsideration;

(j) Staff memoranda or data submitted to the presiding officer, unless prepared and submitted by personal assistants and not inconsistent with RCW 34.05.455; and

(k) Matters placed on the record after an ex parte communication.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings. [1988 c 288 § 423.]

34.05.479 Emergency adjudicative proceedings. (1)

Unless otherwise provided by law, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

(2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

(3) The agency shall enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

(4) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when entered.

(5) After entering an order under this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

(8) This section shall not apply to agency action taken pursuant to a provision of law that expressly authorizes the agency to issue a cease and desist order. The agency may proceed, alternatively, under that independent authority. [1988 c 288 § 424.]

Designation of persons for emergency adjudications by utilities and transportation commission: RCW 80.01.060.

34.05.4791 Secure community transition facility—Proceeding concerning public safety measures. A petition brought pursuant to RCW 71.09.342(5) shall be heard under the provisions of RCW 34.05.479 except that the decision of the governor's designee shall be final and is not subject to judicial review. [2002 c 68 § 10.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

34.05.482 Brief adjudicative proceedings—Applicability. (1) An agency may use brief adjudicative proceedings if:

- (a) The use of those proceedings in the circumstances does not violate any provision of law;
- (b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;
- (c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and
- (d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp or benefit programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1). [1998 c 79 § 3; 1988 c 288 § 425.]

34.05.485 Brief adjudicative proceedings—Procedure. (1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

- (a) The agency head;
- (b) One or more members of the agency head;
- (c) One or more administrative law judges; or
- (d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order. [1989 c 175 § 23; 1988 c 288 § 426.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.488 Brief proceedings—Administrative review—Applicability. Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after service of the written statement required by RCW 34.05.485(3). [1989 c 175 § 24; 1988 c 288 § 427.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.491 Brief proceedings—Administrative review—Procedures. Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties,

(2004 Ed.)

but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted. [1988 c 288 § 428.]

34.05.494 Agency record in brief proceedings. (1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings. [1988 c 288 § 429.]

PART V

JUDICIAL REVIEW AND CIVIL ENFORCEMENT

34.05.510 Relationship between this chapter and other judicial review authority. This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law. [1988 c 288 § 501.]

34.05.514 Petition for review—Where filed. (1) Except as provided in subsections (2) and (3) of this section, proceedings for review under this chapter shall be instituted

by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of a branch campus if the action involves such branch.

(3) For proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2) involving decisions of the department of ecology on applications for changes or transfers of water rights that are the subject of a general adjudication of water rights that is being litigated actively under chapter 90.03 or 90.44 RCW, the petition must be filed with the superior court conducting the adjudication, to be consolidated by the court with the general adjudication. A party to the adjudication shall be a party to the appeal under this chapter only if the party files or is served with a petition for review to the extent required by this chapter. [2001 c 220 § 3. Prior: 1995 c 347 § 113; 1995 c 292 § 9; 1994 c 257 § 23; 1988 c 288 § 502.]

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

34.05.518 Direct review by court of appeals. (1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may, except as otherwise provided in chapter 43.21L RCW, be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to this section or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification shall be established by court rule.

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those

boards identified in RCW 43.21B.005 and growth management hearings boards as identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

(i) Fundamental and urgent statewide or regional issues are raised; or

(ii) The proceeding is likely to have significant precedential value.

(4) The environmental board shall state in the certificate of appealability which criteria it applied, explain how that criteria was met, and file with the certificate a copy of the final decision.

(5) For an appellate court to accept direct review of a final decision of an environmental board, it shall consider the same criteria outlined in subsection (3) of this section, except as otherwise provided in chapter 43.21L RCW.

(6) The procedures for direct review of final decisions of environmental boards include:

(a) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record. The application shall request the environmental board to file a certificate of appealability.

(b) If an issue on review is the jurisdiction of the environmental board, the board may file an application for direct review on that issue.

(c) The environmental board shall have thirty days to grant or deny the request for a certificate of appealability and its decision shall be filed with the superior court and served on all parties of record.

(d) If a certificate of appealability is issued, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court, and the notice shall include a copy of the certificate of appealability and a copy of the final decision.

(e) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(f) If a certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals. [2003 c 393 § 16; 1995 c 382 § 5; 1988 c 288 § 503; 1980 c 76 § 1. Formerly RCW 34.04.133.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

34.05.522 Refusal of review by court of appeals. The court of appeals may refuse to accept direct review of a case pursuant to RCW 34.05.518 if it finds that the case does not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of Appellate Procedure 2.3 do not apply in this instance. The refusal to accept such review is not subject to further appellate review, notwithstanding anything in Rule 13.3 of the Rules of Appellate Procedure to the contrary. [1995 c 382 § 6; 1988 c 288 § 504; 1980 c 76 § 2. Formerly RCW 34.04.135.]

34.05.526 Appellate review by supreme court or court of appeals. An aggrieved party may secure appellate review of any final judgment of the superior court under this chapter by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases. [1988 c 288 § 505; 1988 c 202 § 35; 1971 c 81 § 87; 1959 c 234 § 14. Formerly RCW 34.04.140.]

Reviser's note: This section was amended by 1988 c 202 § 35, effective June 9, 1988, and by 1988 c 288 § 505, effective July 1, 1989, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1988 c 202: See note following RCW 2.24.050.

34.05.530 Standing. A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action. [1988 c 288 § 506.]

34.05.534 Exhaustion of administrative remedies. A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

- (1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, have petitioned for its amendment or repeal, have petitioned the joint administrative rules review committee for its review, or have appealed a petition for amendment or repeal to the governor;
- (2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or
- (3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:
 - (a) The remedies would be patently inadequate;
 - (b) The exhaustion of remedies would be futile; or
 - (c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies. [1997 c 409 § 302; 1995 c 403 § 803; 1988 c 288 § 507.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

(2004 Ed.)

34.05.542 Time for filing petition for review. Subject to other requirements of this chapter or of another statute:

- (1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.
- (2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.
- (3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.
- (4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.
- (5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.
- (6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record. [1998 c 186 § 1; 1988 c 288 § 509.]

34.05.546 Petition for review—Contents. A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner's attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;
- (4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;
- (5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;
- (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- (7) The petitioner's reasons for believing that relief should be granted; and
- (8) A request for relief, specifying the type and extent of relief requested. [1988 c 288 § 510.]

34.05.550 Stay and other temporary remedies. (1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy.

(2) After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health,

safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms. [1989 c 175 § 25; 1988 c 288 § 511.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.554 Limitation on new issues. (1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section. [1988 c 288 § 512.]

34.05.558 Judicial review of facts confined to record. Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter. [1988 c 288 § 513.]

34.05.562 New evidence taken by court or agency. (1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome. [1988 c 288 § 514.]

34.05.566 Agency record for review—Costs. (1) Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies of the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(b) In accordance with any provision of law.

(6) Additions to the record pursuant to RCW 34.05.562 must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record. [1989 c 175 § 26; 1988 c 288 § 515.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.570 Judicial review. (1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(2004 Ed.)

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action. [2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.574 Type of relief. (1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing

matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action. [1989 c 175 § 28; 1988 c 288 § 517.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.578 Petition by agency for enforcement. (1) In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the superior court.

(2) The petition must name as respondent each alleged person against whom the agency seeks to obtain civil enforcement.

(3) Venue is determined as in other civil cases.

(4) A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing. [1988 c 288 § 518.]

34.05.582 Petition by others for enforcement. (1) Any person who would qualify under this chapter as having standing to obtain judicial review of an agency's failure to enforce an order directed to another person may file a petition for civil enforcement of that order, but the action may not be commenced:

(a) Until at least sixty days after the petitioner has given notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each person against whom the petitioner seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same person; or

(c) If a petition for review of the same order has been filed and a stay is in effect.

(2) The petition shall name, as respondents, the agency whose order is sought to be enforced and each person against whom the petitioner seeks civil enforcement.

(3) The agency whose order is sought to be enforced may move to dismiss the petition on the grounds that it fails to qualify under this section or that the enforcement would be

contrary to the policy of the agency. The court shall grant the motion to dismiss the petition unless the petitioner demonstrates that (a) the petition qualifies under this section and (b) the agency's failure to enforce its order is based on an exercise of discretion that is arbitrary or capricious.

(4) Except to the extent expressly authorized by law, a petition for civil enforcement may not request, and the court may not grant, any monetary payment apart from taxable costs. [1988 c 288 § 519.]

34.05.586 Defenses, limitations on. (1) Except as expressly provided in this section, a respondent may not assert as a defense in a proceeding for civil enforcement any fact or issue that the respondent had an opportunity to assert before the agency or a reviewing court and did not, or upon which the final determination of the agency or a reviewing court was adverse to the respondent. A respondent may assert as a defense only the following:

(a) That the rule or order is invalid under RCW 34.05.570(3) (a), (b), (c), (d), (g), or (h), but only when the respondent did not know and was under no duty to discover, or could not reasonably have discovered, facts giving rise to this issue;

(b) That the interest of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action after the respondent has exhausted the last foreseeable opportunity for seeking relief from the agency or from a reviewing court;

(c) That the order does not apply to the respondent or that the respondent has not violated the order; or

(d) A defense specifically authorized by statute to be raised in a civil enforcement proceeding.

(2) The limitations of subsection (1) of this section do not apply to the extent that:

(a) The agency action sought to be enforced is a rule and the respondent has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue; or

(b) The agency action sought to be enforced is an order and the respondent was not notified actually or constructively of the related adjudicative proceeding in substantial compliance with this chapter.

(3) The court, to the extent necessary for the determination of the matter, may take new evidence. [1989 c 175 § 29; 1988 c 288 § 520.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.588 Enforcement of agency subpoena. (1) If a person fails to obey an agency subpoena issued in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the agency or attorney issuing the subpoena may petition the superior court of any county where the hearing is being conducted, where the subpoenaed person resides or is found, or where subpoenaed documents are located, for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has

not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

(2) Agencies with statutory authority to issue investigative subpoenas may petition for enforcement of such subpoenas in accordance with subsection (1) of this section. The agency may petition the superior court of any county where the subpoenaed person resides or is found, or where subpoenaed documents are located. If it appears to the court that the subpoena was properly issued, that the investigation is being conducted for a lawfully authorized purpose, and that the testimony or documents required to be produced are adequately specified and relevant to the investigation, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and failing to obey this order the person shall be dealt with as for contempt of court.

(3) Petitions for enforcement of agency subpoenas are not subject to RCW 34.05.578 through 34.05.590. [1989 c 175 § 30.]

Effective date—1989 c 175: See note following RCW 34.05.010.

34.05.590 Incorporation of other judicial review provisions. Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) RCW 34.05.510(2) (ancillary procedural matters); and

(2) RCW 34.05.566 (agency record for judicial review). [1988 c 288 § 521.]

34.05.594 Review by higher court. Decisions on petitions for civil enforcement are reviewable as in other civil cases. [1988 c 288 § 522.]

34.05.598 Frivolous petitions. The provisions of RCW 4.84.185 relating to civil actions that are frivolous and advanced without reasonable cause apply to petitions for judicial review under this chapter. [1988 c 288 § 607.]

PART VI LEGISLATIVE REVIEW

34.05.610 Joint administrative rules review committee—Members—Appointment—Terms—Vacancies. (1) There is hereby created a joint administrative rules review committee which shall be a bipartisan committee consisting of four senators and four representatives from the state legis-

(2004 Ed.)

lature. The senate members of the committee shall be appointed by the president of the senate, and the house members of the committee shall be appointed by the speaker of the house. Not more than two members from each house may be from the same political party. The appointing authorities shall also appoint one alternate member from each caucus of each house. All appointments to the committee are subject to approval by the caucuses to which the appointed members belong.

(2) Members and alternates shall be appointed as soon as possible after the legislature convenes in regular session in an odd-numbered year, and their terms shall extend until their successors are appointed and qualified at the next regular session of the legislature in an odd-numbered year or until such persons no longer serve in the legislature, whichever occurs first. Members and alternates may be reappointed to the committee.

(3) On or about January 1, 1999, the president of the senate shall appoint the chairperson and the vice chairperson from among the committee membership. The speaker of the house shall appoint the chairperson and the vice chairperson in alternating even-numbered years beginning in the year 2000 from among the committee membership. The secretary of the senate shall appoint the chairperson and the vice chairperson in the alternating even-numbered years beginning in the year 2002 from among the committee membership. Such appointments shall be made in January of each even-numbered year as soon as possible after a legislative session convenes.

(4) The chairperson of the committee shall cause all meeting notices and committee documents to be sent to the members and alternates. A vacancy shall be filled by appointment of a legislator from the same political party as the original appointment. The appropriate appointing authority shall make the appointment within thirty days of the vacancy occurring. [1998 c 280 § 9; 1996 c 318 § 2; 1988 c 288 § 601; 1983 c 53 § 1; 1981 c 324 § 5. Formerly RCW 34.04.210.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.620 Review of proposed rules—Notice. If the rules review committee finds by a majority vote of its members that a proposed rule is not within the intent of the legislature as expressed in the statute which the rule implements, or that an agency may not be adopting a proposed rule in accordance with all applicable provisions of law, the committee shall give the affected agency written notice of its decision. The notice shall be given at least seven days prior to any hearing scheduled for consideration of or adoption of the proposed rule pursuant to RCW 34.05.320. The notice shall include a statement of the review committee's findings and the reasons therefor. When the agency holds a hearing on the proposed rule, the agency shall consider the review committee's decision. [1996 c 318 § 3; 1994 c 249 § 17; 1988 c 288 § 602; 1987 c 451 § 1; 1981 c 324 § 6. Formerly RCW 34.04.220.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.630 Review of existing rules—Policy and interpretive statements, etc.—Notice—Hearing. (1) All rules required to be filed pursuant to RCW 34.05.380, and emergency rules adopted pursuant to RCW 34.05.350, are subject to selective review by the committee.

(2) All agency policy and interpretive statements, guidelines, and documents that are of general applicability, or their equivalents, are subject to selective review by the committee to determine whether or not a statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all applicable provisions of law.

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, or (c) that an agency is using a policy or interpretive statement in place of a rule, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in RCW 34.05.320. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, and (c) whether the agency is using a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, in place of a rule. [1998 c 21 § 1; 1996 c 318 § 4; 1994 c 249 § 18; 1993 c 277 § 1; 1988 c 288 § 603; 1987 c 451 § 2; 1981 c 324 § 7. Formerly RCW 34.04.230.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.640 Committee objections to agency intended action—Statement in register and WAC—Suspension of rule.

(1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its intended action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules.

(2) If the rules review committee finds by a majority vote of its members: (a) That the proposed or existing rule in question will not be modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, (b) that an existing rule was not adopted in accordance with all applicable provisions of law, or (c) that the agency will not replace the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, with a rule, the rules review committee may,

within thirty days from notification by the agency of its intended action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3)(a) If the rules review committee makes an adverse finding regarding an existing rule under subsection (2)(a) or (b) of this section, the committee may, by a majority vote of its members, recommend suspension of the rule. Within seven days of such vote the committee shall transmit to the appropriate standing committees of the legislature, the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(b) If the rules review committee makes an adverse finding regarding a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (2)(c) of this section, the committee may, by a majority vote of its members, advise the governor of its finding.

(4) The code reviser shall publish transmittals from the rules review committee or the governor issued pursuant to subsection (2) or (3) of this section in the Washington state register and shall publish in the next supplement and compilation of the Washington Administrative Code a reference to the committee's objection or recommended suspension and the governor's action on it and to the issue of the Washington state register in which the full text thereof appears.

(5) The reference shall be removed from a rule published in the Washington Administrative Code if a subsequent adjudicatory proceeding determines that the rule is within the intent of the legislature or was adopted in accordance with all applicable laws, whichever was the objection of the rules review committee. [1998 c 21 § 2; 1996 c 318 § 5; 1994 c 249 § 19; 1993 c 277 § 2; 1988 c 288 § 604; 1987 c 451 § 3; 1981 c 324 § 8. Formerly RCW 34.04.240.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.650 Recommendations by committee to legislature.

The rules review committee may recommend to the legislature that the original enabling legislation serving as authority for the adoption of any rule reviewed by the committee be amended or repealed in such manner as the committee deems advisable. [1988 c 288 § 605; 1987 c 451 § 4; 1981 c 324 § 9. Formerly RCW 34.04.250.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.655 Petition for review. (1) Any person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of gen-

eral applicability, or its equivalent. A petition to review a statement, guideline, or document that is of general applicability, or its equivalent, may only be filed for the purpose of requesting the committee to determine whether the statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all provisions of law. Within thirty days of the receipt of the petition, the rules review committee shall acknowledge receipt of the petition and describe any initial action taken. If the rules review committee rejects the petition, a written statement of the reasons for rejection shall be included.

(2) A person may petition the rules review committee under subsection (1) of this section requesting review of an existing rule only if the person has petitioned the agency to amend or repeal the rule under RCW 34.05.330(1) and such petition was denied.

(3) A petition for review of a rule under subsection (1) of this section shall:

(a) Identify with specificity the proposed or existing rule to be reviewed;

(b) Identify the specific statute identified by the agency as authorizing the rule, the specific statute which the rule interprets or implements, and, if applicable, the specific statute the department is alleged not to have followed in adopting the rule;

(c) State the reasons why the petitioner believes that the rule is not within the intent of the legislature, or that its adoption was not or is not in accordance with law, and provide documentation to support these statements;

(d) Identify any known judicial action regarding the rule or statutes identified in the petition.

A petition to review an existing rule shall also include a copy of the agency's denial of a petition to amend or repeal the rule issued under RCW 34.05.330(1) and, if available, a copy of the governor's denial issued under RCW 34.05.330(3).

(4) A petition for review of a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (1) of this section shall:

(a) Identify the specific policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, to be reviewed;

(b) Identify the specific statute which the rule interprets or implements;

(c) State the reasons why the petitioner believes that the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, meets the definition of a rule under RCW 34.05.010 and should have been adopted according to the procedures of this chapter;

(d) Identify any known judicial action regarding the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, or statutes identified in the petition.

(5) Within ninety days of receipt of the petition, the rules review committee shall make a final decision on the rule for which the petition for review was not previously rejected. [1998 c 21 § 3; 1996 c 318 § 7; 1995 c 403 § 502.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

(2004 Ed.)

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.660 Review and objection procedures—No presumption established. It is the express policy of the legislature that establishment of procedures for review of administrative rules by the legislature and the notice of objection required by RCW 34.05.630(3) and 34.05.640(2) in no way serves to establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceedings interpreting such rules. [2001 c 64 § 2; 1988 c 288 § 606; 1981 c 324 § 10. Formerly RCW 34.04.260.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.665 Submission of rule for review—State employees protected. Any individual employed or holding office in any department or agency of state government may submit rules warranting review to the rules review committee. Any such state employee is protected under chapter 42.40 RCW. [1995 c 403 § 503.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.671 Reports—Advisory boards—Staff. (1) The rules review committee may make reports from time to time to the members of the legislature and to the public with respect to any of its findings or recommendations. The committee shall keep complete minutes of its meetings.

(2) The committee may establish ad hoc advisory boards, including but not limited to, ad hoc economics or science advisory boards to assist the committee in its rules review functions.

(3) The committee may hire staff as needed to perform functions under this chapter. [1995 c 403 § 505.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.675 Inspection of properties—Oaths, subpoenas, witnesses, depositions. In the discharge of any duty imposed under this chapter, the rules review committee may examine and inspect all properties, equipment, facilities, files, records, and accounts of any state office, department, institution, board, committee, commission, or agency, and administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the superior courts. [1995 c 403 § 506.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

34.05.681 Enforcement—Committee subpoena—Refusal to testify. In case of the failure on the part of any

person to comply with any subpoena issued in [on] behalf of the rules review committee, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it is the duty of the superior court of any county, or of the judge thereof, on application of the committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. [1995 c 403 § 507.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

PART IX TECHNICAL PROVISIONS

34.05.900 Captions and headings. Section captions and subchapter headings used in this chapter do not constitute any part of the law. [1988 c 288 § 703.]

34.05.901 Severability—1988 c 288. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1988 c 288 § 704.]

34.05.902 Effective date—Application—1988 c 288. RCW 34.05.001 through 34.05.902 shall take effect on July 1, 1989, and shall apply to all rule-making actions and agency proceedings begun on or after that date. Rule-making actions or other agency proceedings begun before July 1, 1989, shall be completed under the applicable provisions of chapter 28B.19 or 34.04 RCW existing immediately before that date in the same manner as if they were not amended by chapter 288, Laws of 1988 or repealed by section 701 of chapter 288, Laws of 1988. [1988 c 288 § 705.]

Recodification—Correction of statutory references—1988 c 288: "Parts X through XV of this act shall constitute a new chapter in Title 34 RCW, and the sections amended or set forth in this act shall be recodified in the order they appear in this act. The code reviser shall correct all statutory references to these sections and to the repealed chapters 28B.19 and 34.04 RCW to reflect this recodification and repeal." [1988 c 288 § 706.]

34.05.903 Severability—1998 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 280 § 14.]

Chapter 34.12 RCW

OFFICE OF ADMINISTRATIVE HEARINGS

Sections

34.12.010	Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal.
34.12.020	Definitions.
34.12.030	Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office.
34.12.035	State patrol disciplinary hearings.
34.12.037	Human rights commission proceedings.
34.12.038	Local government whistleblower proceedings.
34.12.039	Local government whistleblower proceedings—Costs.
34.12.040	Hearings conducted by administrative law judges—Criteria for assignment.
34.12.050	Administrative law judge—Motion of prejudice against—Request for assignment of.
34.12.060	Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings.
34.12.070	Record of hearings.
34.12.080	Procedural conduct of hearings—Rules.
34.12.090	Transfer of employees and equipment.
34.12.100	Salaries.
34.12.110	Application of chapter.
34.12.120	Appointment of chief administrative law judge.
34.12.130	Administrative hearings revolving fund—Created, purposes.
34.12.140	Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher.
34.12.150	Accounting procedures.
34.12.160	Direct payments by agencies, when authorized.

Bilingual services for non-English speaking public assistance applicants and recipients: RCW 74.04.025.

34.12.010 Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal. A state office of administrative hearings is hereby created. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with the legislative intent expressed by this chapter. Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding. The office shall be under the direction of a chief administrative law judge, appointed by the governor with the advice and consent of the senate, for a term of five years. The person appointed is required, as a condition of appointment, to be admitted to practice law in the state of Washington, and may be removed for cause. [1981 c 67 § 1.]

Effective dates—1981 c 67: "Sections 12 and 37 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of the act shall take effect July 1, 1982." [1981 c 67 § 40.]

Severability—1981 c 67: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 67 § 39.]

34.12.020 Definitions. (Effective until July 1, 2006.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(2004 Ed.)

(1) "Office" means the office of administrative hearings.

(2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.

(3) "Hearing" means an adjudicative proceeding within the meaning of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.

(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the growth management hearings boards, the utilities and transportation commission, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the Washington personnel resources board, the public employment relations commission, the personnel appeals board, and the board of tax appeals. [1995 c 331 § 1; 1994 c 257 § 22; 1993 c 281 § 16; 1989 c 175 § 33; 1982 c 189 § 1; 1981 c 67 § 2.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1982 c 189: "This act shall take effect July 1, 1982." [1982 c 189 § 16.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.020 Definitions. (Effective July 1, 2006.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the growth management hearings boards, the utilities and transportation commission, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the Washington personnel resources board, the public employment relations commission, and the board of tax appeals. [2002 c 354 § 226; 1995 c 331 § 1; 1994 c 257 § 22; 1993 c 281 § 16; 1989 c 175 § 33; 1982 c 189 § 1; 1981 c 67 § 2.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Severability—1994 c 257: See note following RCW 36.70A.270.

Effective date—1993 c 281: See note following RCW 41.06.022.

[Ch. 34.12—page 145]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1982 c 189: "This act shall take effect July 1, 1982." [1982 c 189 § 16.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.030 Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office. (1) The chief administrative law judge shall appoint administrative law judges to fulfill the duties prescribed in this chapter. All administrative law judges shall have a demonstrated knowledge of administrative law and procedures. The chief administrative law judge may establish different levels of administrative law judge positions.

(2) The chief administrative law judge may also contract with qualified individuals to serve as administrative law judges for specified hearings. Such individuals shall be compensated for their services on a contractual basis for each hearing, in accordance with chapter 43.88 RCW. The chief administrative law judge may not contract with any individual who is at that time an employee of the state.

(3) The chief administrative law judge may appoint such clerical and other specialized or technical personnel as may be necessary to carry on the work of this chapter.

(4) The administrative law judges appointed under subsection (1) of this section are subject to discipline and termination, for cause, by the chief administrative law judge. Upon written request by the person so disciplined or terminated, the chief administrative law judge shall forthwith put the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(5) All employees of the office except the chief administrative law judge and the administrative law judges are subject to chapter 41.06 RCW.

(6) The office may adopt rules for its own operation and in furtherance of this chapter in accordance with chapter 34.05 RCW. [1981 c 67 § 3.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.035 State patrol disciplinary hearings. The chief administrative law judge shall designate an administrative law judge to serve, as the need arises, as presiding officer in state patrol disciplinary hearings conducted under RCW 43.43.090. [1984 c 141 § 6.]

34.12.037 Human rights commission proceedings. When requested by the state human rights commission, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 49.60 RCW. [1985 c 185 § 29.]

34.12.038 Local government whistleblower proceedings. When requested by a local government, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 42.41 RCW. [1992 c 44 § 8.]

[Ch. 34.12—page 146]

Effective dates—Severability—1992 c 44: See RCW 42.41.901 and 42.41.902.

34.12.039 Local government whistleblower proceedings—Costs. Costs for the services of the office of administrative hearings for the initial twenty-four hours of services on a hearing under chapter 42.41 RCW shall be billed to the local government administrative hearings account. Costs for services beyond the initial twenty-four hours of services shall be allocated to the parties by the administrative law judge, the proportion to be borne by each party at the discretion of the administrative law judge. The charges for these costs shall be billed to the affected local government that shall recover payment from any other party specified by the administrative law judge. [1992 c 44 § 9.]

Effective date—Severability—1992 c 44: See RCW 42.41.901 and 42.41.902.

34.12.040 Hearings conducted by administrative law judges—Criteria for assignment. Whenever a state agency conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the hearing shall be conducted by an administrative law judge assigned under this chapter. In assigning administrative law judges, the chief administrative law judge shall wherever practical (1) use personnel having expertise in the field or subject matter of the hearing, and (2) assign administrative law judges primarily to the hearings of particular agencies on a long-term basis. [1981 c 67 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.050 Administrative law judge—Motion of prejudice against—Request for assignment of. (1) Any party to a hearing being conducted under the provisions of this chapter (including the state agency, whether or not it is nominally a party) may file with the chief administrative law judge a motion of prejudice, with supporting affidavit, against the administrative law judge assigned to preside at the hearing. The first such motion filed by any party shall be automatically granted.

(2) Any state agency may request from the chief administrative law judge the assignment of an administrative law judge for the purpose of conducting a rule-making or investigatory proceeding. [1981 c 67 § 5.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.060 Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings. When an administrative law judge presides at a hearing under this chapter and a majority of the officials of the agency who are to render the final decision have not heard substantially all of the oral testimony and read all exhibits submitted by any party, it shall be the duty of such judge, or in the event of his unavailability or incapacity, of another judge appointed by the chief administrative law judge, to issue an initial decision or proposal for decision including findings of fact and conclusions of law in accordance with RCW 34.05.461 or 34.05.485. However, this section does not apply to a state patrol disciplinary hearing.

(2004 Ed.)

ing conducted under RCW 43.43.090. [1989 c 175 § 34; 1984 c 141 § 7; 1982 c 189 § 2; 1981 c 67 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.070 Record of hearings. The chief administrative law judge may establish a method of making a record of all hearings and may employ or contract in order to implement such method. [1981 c 67 § 7.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.080 Procedural conduct of hearings—Rules. All hearings shall be conducted in conformance with the Administrative Procedure Act, chapter 34.05 RCW. After consultation with affected agencies, the chief administrative law judge may promulgate rules governing the procedural conduct of the hearings. Such rules shall seek the maximum procedural uniformity in agency hearings consistent with demonstrable needs for individual agency variation. [1981 c 67 § 8.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.090 Transfer of employees and equipment. (1) All state employees who have exclusively or principally conducted or presided over hearings for state agencies prior to July 1, 1982, shall be transferred to the office.

(2) All state employees who have exclusively or principally served as support staff for those employees transferred under subsection (1) of this section shall be transferred to the office.

(3) All equipment or other tangible property in possession of state agencies, used or held exclusively or principally by personnel transferred under subsection (1) of this section shall be transferred to the office unless the office of financial management, in consultation with the head of the agency and the chief administrative law judge, determines that the equipment or property will be more efficiently used by the agency if such property is not transferred. [1981 c 67 § 9.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.100 Salaries. The chief administrative law judge shall be paid a salary fixed by the governor after recommendation of the state committee on agency officials' salaries. The salaries of administrative law judges appointed under the terms of this chapter shall be determined by the chief administrative law judge after recommendation of the state committee on agency officials' salaries. [1986 c 155 § 10; 1981 c 67 § 10.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.110 Application of chapter. The creation of the office of administrative hearings and the transfer of duties and personnel under this chapter shall not affect the validity

of any rule, action, decision, or proceeding held or promulgated by any state agency before July 1, 1982. This chapter applies to hearings occurring after July 1, 1982. [1981 c 67 § 11.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.120 Appointment of chief administrative law judge. The governor shall appoint the chief administrative law judge. [1989 c 175 § 35; 1981 c 67 § 12.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.130 Administrative hearings revolving fund—Created, purposes. The administrative hearings revolving fund is hereby created in the state treasury for the purpose of centralized funding, accounting, and distribution of the actual costs of the services provided to agencies of the state government by the office of administrative hearings. [1982 c 189 § 9.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher. The amounts to be disbursed from the administrative hearings revolving fund from time to time shall be transferred thereto by the state treasurer from funds appropriated to any and all agencies for administrative hearings expenses on a quarterly basis. Agencies operating in whole or in part from nonappropriated funds shall pay into the administrative hearings revolving fund such funds as will fully reimburse funds appropriated to the office of administrative hearings for any services provided activities financed by nonappropriated funds. The funds from the employment security department for the administrative hearings services provided by the office of administrative hearings shall not exceed that portion of the resources provided to the employment security department by the department of labor, employment and training administration, for such administrative hearings services. To satisfy department of labor funding requirements, the office of administrative hearings shall meet or exceed timeliness standards under federal regulations in the conduct of employment security department appeals.

The director of financial management shall allot all such funds to the office of administrative hearings for the operation of the office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other agencies under chapter 43.88 RCW.

Disbursements from the administrative hearings revolving fund shall be pursuant to vouchers executed by the chief administrative law judge or his designee. [1982 c 189 § 10.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.150 Accounting procedures. The chief administrative law judge shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall pre-

scribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months. [1982 c 189 § 11.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.160 Direct payments by agencies, when authorized. In cases where there are unanticipated demands for services of the office of administrative hearings or where there are insufficient funds on hand or available for payment through the administrative hearings revolving fund or in other cases of necessity, the chief administrative law judge may request payment for services directly from agencies for whom the services are performed to the extent that revenues or other funds are available. Upon approval by the director of financial management, the agency shall make the requested payment. The payment may be made on either an advance or reimbursable basis as approved by the director of financial management. [1982 c 189 § 12.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Chapter 42.17 RCW

DISCLOSURE—CAMPAIGN FINANCES— LOBBYING—RECORDS

Sections

42.17.310 Certain personal and other records exempt.

42.17.310 Certain personal and other records exempt. (*Expires June 30, 2005.*) (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed

or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for cases pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and

(ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under **RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the con-

tinuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of

which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records,

but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) Proprietary information deemed confidential for the purposes of section 923, chapter 26, Laws of 2003 1st sp. sess.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained

finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2003 1st sp.s. c 26 § 926; 2003 c 277 § 3; 2003 c 124 § 1. Prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: *(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

***(2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

(3) This section was amended by 2003 c 124 § 1, 2003 c 277 § 3, and by 2003 1st sp.s. c 26 § 926, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

Effective date—2002 c 224 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature

declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1996 c 305: See note following RCW 28B.85.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Effective date—1994 c 233: See note following RCW 70.123.075.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

Effective date—1993 c 360: See note following RCW 18.130.085.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—1991 c 87: See note following RCW 18.64.350.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1989 c 279: See RCW 43.163.901.

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1987 c 411: See RCW 69.45.900.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability—1986 c 276: See RCW 53.31.901.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection

accounting records of special inquiry judge: RCW 10.29.090.

bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.

certificate submitted by physically or mentally disabled person seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

employer information: RCW 50.13.060.

family and children's ombudsman: RCW 43.06A.050.

joint legislative service center, information: RCW 44.68.060.

medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.

organized crime

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

public transportation information: RCW 47.04.230.

salary and fringe benefit survey information: RCW 41.06.160.

42.17.310 Certain personal and other records exempt. (Effective June 30, 2005.) (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to

information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW main-

tained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under **RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other finan-

cial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vul-

nerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of fire-arm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2003 c 277 § 3; 2003 c 124 § 1. Prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299

§ 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: *(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

** (2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

(3) This section was amended by 2003 c 124 § 1 and by 2003 c 277 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

Effective date—2002 c 224 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1996 c 305: See note following RCW 28B.85.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Effective date—1994 c 233: See note following RCW 70.123.075.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

(2004 Ed.)

Effective date—1993 c 360: See note following RCW 18.130.085.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—1991 c 87: See note following RCW 18.64.350.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1989 c 279: See RCW 43.163.901.

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1987 c 411: See RCW 69.45.900.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability—1986 c 276: See RCW 53.31.901.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection

accounting records of special inquiry judge: RCW 10.29.090.

bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.

certificate submitted by physically or mentally disabled person seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

employer information: RCW 50.13.060.

family and children's ombudsman: RCW 43.06A.050.

joint legislative service center, information: RCW 44.68.060.

medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.

organized crime

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

public transportation information: RCW 47.04.230.

salary and fringe benefit survey information: RCW 41.06.160.

Chapter 43.05 RCW

TECHNICAL ASSISTANCE PROGRAMS

Sections

43.05.005	Findings.
43.05.010	Definitions.
43.05.020	Agency programs—List of technical assistance providers.
43.05.030	Technical assistance visit—Notice of violation.
43.05.040	Time to correct violations—Revisit—Issuance of penalties.
43.05.050	Issuance of penalty during technical assistance visit.
43.05.060	Department of ecology—Notice of correction.
43.05.070	Department of ecology—Penalty.
43.05.080	Application of RCW 43.05.060 and 43.05.070—Limited.
43.05.090	Department of labor and industries—Consultative visit, report—Compliance inspection, citation.
43.05.100	Departments of agriculture, fish and wildlife, health, licensing, natural resources—Notice of correction.
43.05.110	Departments of agriculture, fish and wildlife, health, licensing, natural resources—Penalty.
43.05.120	Time for compliance—Extension.
43.05.130	Educational programs.
43.05.140	Pilot voluntary audit program.
43.05.150	Agency immunity—Enforcement authority.
43.05.901	Conflict with federal requirements.
43.05.902	Resolution of conflict with federal requirements—Notification.
43.05.903	Part headings not law—1995 c 403.
43.05.904	Severability—1995 c 403.
43.05.905	Findings—Short title—Intent—1995 c 403.

43.05.005 Findings. The legislature finds that, due to the volume and complexity of laws and rules it is appropriate for regulatory agencies to adopt programs and policies that encourage voluntary compliance by those affected by specific rules. The legislature recognizes that a cooperative partnership between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties will achieve greater compliance with laws and rules and that most individuals and businesses who are subject to regulation will attempt to comply with the law, particularly if they are given sufficient information. In this context, enforcement should assure that the majority of a regulated community that complies with the law are not placed at a competitive disadvantage and that a continuing failure to comply that is within the control of a party who has received technical assistance is considered by an agency when it determines the amount of any civil penalty that is issued. [1995 c 403 § 601.]

43.05.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law or rules. The term does not include any criminal penalty, damage assessments, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

(2) "Regulatory agency" means an agency as defined in RCW 34.05.010 that has the authority to issue civil penalties. The term does not include the state patrol or any institution of higher education as defined in RCW 28B.10.016.

(3) "Technical assistance" includes:

(a) Information on the laws, rules, and compliance methods and technologies applicable to the regulatory agency's programs;

(b) Information on methods to avoid compliance problems;

(c) Assistance in applying for permits; and

(d) Information on the mission, goals, and objectives of the program.

(4) "Technical assistance documents" means documents prepared to provide information specified in subsection (3) of this section entitled a technical assistance document by the agency head or its designee. Technical assistance documents do not include notices of correction, violation, or enforcement action. Technical assistance documents do not impose mandatory obligations or serve as the basis for a citation. [1999 c 236 § 1; 1995 c 403 § 602.]

43.05.020 Agency programs—List of technical assistance providers. All regulatory agencies shall develop programs to encourage voluntary compliance by providing technical assistance consistent with statutory requirements. The programs shall include but are not limited to technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods to provide technical assistance. In addition, all regulatory agencies shall provide upon request a list of organizations, including private companies, that provide technical assistance. This list shall be compiled by the agencies from information submitted by the organizations and shall not constitute an endorsement by an agency of any organization. [1995 c 403 § 603.]

43.05.030 Technical assistance visit—Notice of violation. (1) For the purposes of this chapter, a technical assistance visit is a visit by a regulatory agency to a facility, business, or other location that:

(a) Has been requested or is voluntarily accepted; and

(b) Is declared by the regulatory agency at the beginning of the visit to be a technical assistance visit.

(2) A technical assistance visit also includes a consultative visit pursuant to RCW 49.17.250.

(3) During a technical assistance visit, or within a reasonable time thereafter, a regulatory agency shall inform the owner or operator of the facility of any violations of law or agency rules identified by the agency as follows:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state or federal law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the agency requires compliance to be achieved;

(d) Notice of the means to contact any technical assistance services provided by the agency or others; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the agency. [1996 c 206 § 2; 1995 c 403 § 604.]

Findings—1996 c 206: "The legislature finds that many individuals and small businesses who are required to comply with laws and agency rules often do not have access to the Revised Code of Washington, the Washington Administrative Code, the United States Code, or the Code of Federal Regulations. In this case, those informed of violations do not know whether, or to what extent, the cited law or agency rule actually applies to their situation. In order to facilitate greater understanding of the law and agency rules, the legislature finds that those who make the effort to obtain technical assistance from a regulatory agency, and those who are issued a notice of correction, should be given the text of the specific section or subsection of the law or agency rule they are alleged to have violated." [1996 c 206 § 1.]

43.05.040 Time to correct violations—Revisit—Issuance of penalties. (1) The owner and operator shall be given a reasonable period of time to correct violations identified during a technical assistance visit before any civil penalty provided for by law is imposed for those violations. A regulatory agency may revisit a facility, business, or other location after a technical assistance visit and a reasonable period of time has passed to correct violations identified by the agency in writing and issue civil penalties as provided for by law for any uncorrected violations.

(2) During a visit under subsection (1) of this section, the regulatory agency may not issue civil penalties for violations not previously identified in a technical assistance visit, unless the violations are of the type for which the agency may issue a citation: (a) During a technical assistance visit under RCW 43.05.050; or (b) under RCW 43.05.090. [2001 c 190 § 1; 1995 c 403 § 605.]

43.05.050 Issuance of penalty during technical assistance visit. A regulatory agency that observes a violation during a technical assistance visit may issue a civil penalty as provided for by law if: (1) The individual or business has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or (2) the issue involves sales taxes due to the state and the individual or business is not remitting previously collected sales taxes to the state; or (3) the violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars. [1995 c 403 § 606.]

43.05.060 Department of ecology—Notice of correction. (1) If in the course of any site inspection or visit that is not a technical assistance visit, the department of ecology becomes aware of conditions that are not in compliance with applicable laws and rules enforced by the department and are not subject to civil penalties as provided for in RCW 43.05.070, the department may issue a notice of correction to the responsible party that shall include:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state or federal law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department requires compliance to be achieved;

(d) Notice of the means to contact any technical assistance services provided by the department or others; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(3) If the department issues a notice of correction, it shall not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice. [1996 c 206 § 3; 1995 c 403 § 607.]

Findings—1996 c 206: See note following RCW 43.05.030.

43.05.070 Department of ecology—Penalty. The department of ecology may issue a civil penalty provided for by law without first issuing a notice of correction if: (1) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or (2) compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; or (3) the violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars. [1995 c 403 § 608.]

43.05.080 Application of RCW 43.05.060 and 43.05.070—Limited. The provisions of RCW 43.05.060 and 43.05.070 affecting civil penalties issued by the department of ecology shall not apply to civil penalties for negligent discharge of oil as authorized under RCW 90.56.330 or to civil penalties as authorized under RCW 90.03.600 for unlawful use of water in violation of RCW 90.03.250 or 90.44.050. [1995 c 403 § 609.]

43.05.090 Department of labor and industries—Consultative visit, report—Compliance inspection, citation. (1) Following a consultative visit pursuant to RCW 49.17.250, the department of labor and industries shall issue a report to the employer that the employer shall make available to its employees. The report shall contain:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state or federal law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department requires compliance to be achieved;

(d) Notice of means to contact technical assistance services provided by the department; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) Following a compliance inspection pursuant to RCW 49.17.120, the department of labor and industries shall issue a citation for violations of industrial safety and health standards. The citation shall not assess a penalty if the violations:

- (a) Are determined not to be of a serious nature;
- (b) Have not been previously cited;
- (c) Are not willful; and
- (d) Do not have a mandatory penalty under chapter 49.17 RCW. [1996 c 206 § 4; 1995 c 403 § 610.]

Findings—1996 c 206: See note following RCW 43.05.030.

43.05.100 Departments of agriculture, fish and wildlife, health, licensing, natural resources—Notice of correction. (1) If in the course of any inspection or visit that is not a technical assistance visit, the department of agriculture, fish and wildlife, health, licensing, or natural resources becomes aware of conditions that are not in compliance with applicable laws and rules enforced by the department and are not subject to civil penalties as provided for in RCW 43.05.110, the department may issue a notice of correction to the responsible party that shall include:

- (a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state or federal law or rule;
- (b) A statement of what is required to achieve compliance;
- (c) The date by which the department requires compliance to be achieved;
- (d) Notice of the means to contact any technical assistance services provided by the department or others; and
- (e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(3) If the department issues a notice of correction, it shall not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice. [1996 c 206 § 5; 1995 c 403 § 611.]

Findings—1996 c 206: See note following RCW 43.05.030.

43.05.110 Departments of agriculture, fish and wildlife, health, licensing, natural resources—Penalty. The department of agriculture, fish and wildlife, health, licensing, or natural resources may issue a civil penalty provided for by law without first issuing a notice of correction if: (1) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or (2) compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; [or] (3) the violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing

physical damage to the property of another in an amount exceeding one thousand dollars; or (4) the violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months. In addition, the department of fish and wildlife may issue a civil penalty provided for by law without first issuing a notice of correction for a violation of any rule dealing with seasons, catch or bag limits, gear types, or geographical areas for fish or wildlife removal, reporting, or disposal.

This section does not apply to the civil penalties imposed under RCW 82.38.170(13). [1998 c 176 § 84; 1995 c 403 § 612.]

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

43.05.120 Time for compliance—Extension. The date for compliance established by the department of ecology, labor and industries, agriculture, fish and wildlife, health, licensing, or natural resources pursuant to RCW 43.05.060, 43.05.090, or 43.05.100 respectively shall provide for a reasonable time to achieve compliance. Any person receiving a notice of correction pursuant to RCW 43.05.060 or 43.05.100 or a report or citation pursuant to RCW 43.05.090 may request an extension of time to achieve compliance for good cause from the issuing department. Requests shall be submitted to the issuing department and responded to by the issuing department in writing in accordance with procedures specified by the issuing department in the notice, report, or citation. [1995 c 403 § 613.]

43.05.130 Educational programs. The departments of revenue and labor and industries and the employment security department shall undertake an educational program directed at those who have the most difficulty in determining their tax or premium liability. The departments may rely on information from internal data, trade associations, and businesses to determine which entities should be selected. The educational programs may include, but not be limited to, targeted informational fact sheets, self-audits, or workshops, and may be presented individually by the agency or in conjunction with other agencies. [1995 c 403 § 614.]

43.05.140 Pilot voluntary audit program. The department of revenue, the department of labor and industries in respect to its duties in Title 51 RCW, and the employment security department shall develop and administer a pilot voluntary audit program. Voluntary audits can be requested by businesses from any of these agencies according to guidelines established by each agency. No penalty assessments may be made against participants in such a program except when the agency determines that either a good faith effort has not been made by the taxpayer or premium payer to comply with the law or that the taxpayer has failed to remit previously collected sales taxes to the state. The persons conducting the voluntary audit shall provide the business undergoing the voluntary audit an audit report that describes errors or omissions found and future reporting instructions. This program does not relieve a business from past or future tax or premium obligations. [1995 c 403 § 615.]

43.05.150 Agency immunity—Enforcement authority. Nothing in this chapter obligates a regulatory agency to conduct a technical assistance visit. The state and officers or employees of the state shall not be liable for damages to a person to the extent that liability is asserted to arise from providing technical assistance, or if liability is asserted to arise from the failure of the state or officers or employees of the state to provide technical assistance. This chapter does not limit the authority of any regulatory agency to take any enforcement action, other than a civil penalty, authorized by law. This chapter shall not limit a regulatory agency's authority to issue a civil penalty as authorized by law based upon a person's failure to comply with specific terms and conditions of any permit or license issued by the agency to that person. [1995 c 403 § 617.]

43.05.901 Conflict with federal requirements. If a regulatory agency determines any part of this chapter to be in conflict with federal law or program requirements, in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, or in conflict with the requirements for eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this chapter shall be inoperative solely to the extent of the conflict. Any rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1995 c 403 § 619.]

43.05.902 Resolution of conflict with federal requirements—Notification. If notified by responsible federal officials of any conflict of this chapter with federal law or program requirements or with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the regulatory agency notified of the conflict shall actively seek to resolve the conflict. If the agency determines that the conflict cannot be resolved without loss of benefits or authority to the state, the agency shall notify the governor, the president of the senate, and the speaker of the house of representatives in writing within thirty days of making that determination. [1995 c 403 § 620.]

43.05.903 Part headings not law—1995 c 403. Part headings as used in this act do not constitute any part of the law. [1995 c 403 § 1101.]

43.05.904 Severability—1995 c 403. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 403 § 1105.]

43.05.905 Findings—Short title—Intent—1995 c 403. See note following RCW 34.05.328.

Chapter 51.08 RCW

DEFINITIONS

Sections

51.08.150 "Permanent partial disability."
51.08.160 "Permanent total disability."

51.08.150 "Permanent partial disability." "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. [1961 c 23 § 51.08.150. Prior: 1957 c 70 § 17; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.160 "Permanent total disability." "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation. [1977 ex.s. c 350 § 13; 1961 c 23 § 51.08.160. Prior: 1957 c 70 § 18; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.060 Permanent total disability compensation—Personal attendant.
 51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations.

51.32.060 Permanent total disability compensation—Personal attendant. (1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages but not less than two hundred fifteen dollars per month.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages but not less than two hundred fifty-two dollars per month.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages but not less than two hundred eighty-three dollars.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages but not less than three hundred six dollars per month.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages but not less than three hundred twenty-nine dollars per month.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages but not less than three hundred fifty-two dollars per month.

(g) If unmarried at the time of the injury, sixty percent of his or her wages but not less than one hundred eighty-five dollars per month.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages but not less than two hundred twenty-two dollars per month.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages but not less than two hundred fifty-three dollars per month.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages but not less than two hundred seventy-six dollars per month.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages but not less than two hundred ninety-nine dollars per month.

(l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages but not less than three hundred twenty-two dollars per month.

(2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

(3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically

helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(4) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(5) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

The limitations under this subsection shall not apply to the payments provided for in subsection (3) of this section.

(6) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

(7) The benefits provided by this section are subject to modification under RCW 51.32.067. [1993 c 521 § 2; 1988 c 161 § 1. Prior: 1986 c 59 § 1; 1986 c 58 § 5; 1983 c 3 § 159; 1977 ex.s. c 350 § 44; 1975 1st ex.s. c 224 § 9; 1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060; prior: 1957 c 70 § 31; 1951 c 115 § 2; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1993 c 521: See note following RCW 51.32.050.

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (Expires June 30, 2007.) (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review

and approval by the worker's physician or licensed advanced registered nurse practitioner.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section. [2004 c 65 § 9. Prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; 1986 c 59 § 2; prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Report to legislature--Effective date--Expiration date--Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (*Effective June 30, 2007.*) (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit

him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section. [1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4. Prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989, pursuant to 1986 c 59 § 6); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2,

part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Reviser's note: This section was amended by 1993 c 271 § 1, 1993 c 299 § 1, and by 1993 c 521 § 3, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

Chapter 72.09 RCW

DEPARTMENT OF CORRECTIONS

Sections

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits.

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits. (*Effective until July 1, 2005.*) It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition.

For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of

a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of *RCW 41.06.380 prohibiting contracting out work performed by classified employees shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2004 c 167 § 2; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

***Reviser's note:** RCW 41.06.380 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Expiration date—2004 c 167 § 2: "Section 2 of this act expires July 1, 2005." [2004 c 167 § 13.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Severability—1983 c 255: See RCW 72.74.900.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits. (*Effective July 1, 2005.*) It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall pro-

duce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the

Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2004 c 167 § 3. Prior: 2002 c 354 § 238; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

Effective date—2004 c 167 § 3: "Section 3 of this act takes effect July 1, 2005." [2004 c 167 § 12.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—2002 c 175: See note following RCW 7.80.130.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Severability—1983 c 255: See RCW 72.74.900.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

Chapter 74.20A RCW

SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined.

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined. Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision, or department of the state asserting a support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 6.27.150 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy support obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050 or Title 74 RCW. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. [1982 1st ex.s. c 18 § 12. Prior: 1982 c 201 § 21; 1979 ex.s. c 171 § 10; 1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

A		ADMINISTRATIVE FUND
ACADEMIC YEAR, DEFINED	50.44.050	Revenues
ACCOUNTS:		Salaries of Assistants & Attorneys, paid out of
Administrative Contingency Fund (see also		Unemployment Compensation Fund (see also
ADMINISTRATIVE CONTINGENCY FUND)	50.16.020	UNEMPLOYMENT COMPENSATION
Base Year Employer	50.20.150	ADMINISTRATIVE FUND)
Employment Experience Rating, maintained for	50.29.020	ADMINISTRATIVE PROCEDURE ACT
Joint	50.24.170	General Provisions (Part I)
Local Government Tax, for political subdivisions not		Compliance feasibility studies, pilot projects
electing to make payments in lieu of contributions	50.44.035	Conversion of Proceedings
Reserve Accounts	50.44.035	Definitions
Computation of (see COMPUTATION OF)		Exclusions from chapter or parts of chapter
Uncollectible	50.24.190	Informal Settlements
Unemployment Compensation Fund (see also		Operation of chapter if in conflict with federal law
UNEMPLOYMENT COMPENSATION FUND)	50.16.020	Rules coordinator
ACT, Employment Security		Savings—Authority of agencies to comply with
Citation of	50.01.005	chapter—Effect of subsequent legislation
Interpretation, in compliance with Federal		Variation from time limits
Unemployment Tax Act	50.98.110	Waiver
Publication & distribution of	50.12.160	Public Access to Agency Rules (Part II)
Repeal of	50.98.060	Code and register—Publication and distribution—
Separability of provisions	50.98.070	Omissions, removals, revisions—Judicial notice
ACTIONS		Declaratory order by agency—Petition—Court review
Assessment, notice and order of	50.24.070	Interpretive and policy statements
Civil, Collection by	50.24.120	Model rules of procedure
Commenced under prior laws	50.98.030	Rules for agency procedure—Indexes of
Criminal	50.98.030	opinions and statements
Injunction proceedings	50.24.180	Rule-Making Procedures (Part III)
Institution and prosecution of	50.12.150	Concise explanatory statement
Jeopardy assessment	50.24.080	Emergency rules and amendments
Lien foreclosure	50.24.120	Failure to give twenty days notice of
Limitation of	50.24.190	intended action—Effect
Order and Notice of Assessment	50.24.070	Filing with code reviser—Register—Effective dates
Notice and Order to Withhold and Deliver	50.24.110	Format and style of amendatory and new sections
Overpayment of benefits, recovery of	50.20.190	—Failure to comply
.....	50.24.020	Incorporation by reference
Petition for Review	34.04.130	Notice of proposed rule—Contents—Distribution
Records, to produce	50.12.100	by agency—Institutions of higher education
Remedies cumulative	50.24.140	Order adopting rule, contents
Remedies exclusive	50.32.180	Petition for adoption, amendment, repeal
ADDITIONAL BENEFITS		—Agency action
Application of statute and rules—Eligibility		Public participation
for extended benefits	50.22.020	Rule-making docket
Definitions	50.22.010	Rule-making file
Employment security department authorized		Rules for the filing and form of rules and notices
to pay training benefits—Expenditures	50.22.140	Solicitation of comments before notice
Extended benefit eligibility conditions—		publication—Rules coordinator
Interstate claim	50.22.030	Style, format, and numbering—Agency compliance
Total extended benefit amount—Reduction	50.22.050	Substantial compliance with procedures
Weekly extended benefit amount	50.22.040	Variance between proposed and final rule
Public announcement when extended benefit		Withdrawal of proposal—Time and manner of
period becomes effective or is terminated—		adoption
Computations of rate of insured unemployment	50.22.060	Adjudicative Proceedings (Part IV)
Supplemental additional benefits—		Agency action on applications for adjudication
February 26, 1994, through December 31, 1995		Agency record
—Eligibility	50.22.105	Agency record in brief proceedings
Training benefits—Eligibility—Payment—		Application of Part IV
Local work force development council to identify		Brief adjudicative proceedings—Applicability
declining and high demand occupations and		Brief adjudicative proceedings—Procedure
skill sets—Rules	50.22.150	Brief proceedings—Administrative review
Training benefits program—Intent	50.22.130	—Applicability
ADJUSTMENTS AND REFUNDS OF		Brief proceedings—Administrative review
CONTRIBUTIONS AND INTEREST	50.24.150	—Procedures
ADMINISTRATION FUND (see UNEMPLOYMENT		Commencement—When required
COMPENSATION FUND)		Conference—Procedure and participation
ADMINISTRATION OF ACT	50.12.010	Decision not to conduct an adjudication
ADMINISTRATIVE CONTINGENCY FUND	50.16.010	Default
Administration of	50.16.010	Effectiveness of orders
.....	50.16.020	Emergency adjudicative proceedings
Established	50.16.010	Entry of order
Limitations on use of	50.16.010	Ex parte communication
Payment of, security bond premiums	50.16.020	Intervention
Purpose of	50.16.010	Notice of hearing
Refund from	50.16.020	Pleadings, briefs, motions, service
.....	50.24.150	Presiding officers—Disqualification, substitution
Source/composition of	50.16.010	Procedures at hearing
.....	50.24.040	Rate changes, licenses
		Reconsideration

Representation.....	34.05.428	Denial of benefits	50.32.020
Review of initial orders.....	34.05.464	Experience Rating Determination	50.29.070
Rules of evidence—Cross-examination	34.05.452	Experience Rating Redetermination	50.29.080
Separation of functions	34.05.458	Judgment of superior court.....	50.32.120
Stay.....	34.05.467	Order and notice of assessment.....	50.32.030
Subpoenas, discovery, and protective orders	34.05.446	Redetermination (benefits) to correct error.....	50.20.160
Judicial Review and Civil Enforcement (Part V)		Hearing Conduct	50.32.060
Agency record for review—Costs	34.05.566	Limitation on employers right to file	50.32.030
Appellate review by supreme court or court of appeals	34.05.526	Limited by agreement, decision final	50.32.170
Defenses, limitations on.....	34.05.586	Mailed, when deemed filed & received	50.32.025
Direct review by court of appeals.....	34.05.518	Procedures	
Enforcement of agency subpoena.....	34.05.588	Benefits.....	50.32.040
Exhaustion of administrative remedies.....	34.05.534	Commissioner Review	50.32.080
Frivolous petitions	34.05.598	Contributions	50.32.050
Incorporation of other judicial review provisions	34.05.590	Judicial Review	50.32.120
Judicial review	34.05.570	Remedies of title exclusive.....	50.32.180
Judicial review of facts confined to record.....	34.05.558	Where Filed	50.32.010
Limitation on new issues	34.05.554	APPEALS TO COURT	
New evidence taken by court or agency.....	34.05.562	Jurisdiction of courts.....	50.32.150
Petition by agency for enforcement.....	34.05.578	Interstate, Thurston County	50.32.140
Petition by others for enforcement	34.05.582	.....	34.04.130
Petition for review—Contents	34.05.546	Superior court.....	50.32.120
Petition for review—Where filed	34.05.514	Supreme court	50.32.120
Refusal of review by court of appeals.....	34.05.522	Undertakings on	50.32.130
Relationship between this chapter and other judicial review authority.....	34.05.510	APPEALS TRIBUNAL (also see OFFICE OF ADMINISTRATIVE HEARINGS)	
Review by higher court.....	34.05.594	Appeals to, where filed.....	50.32.010
Standing	34.05.530	Applicability of findings.....	50.32.097
Stay and other temporary remedies	34.05.550	Benefit appeal to, filing of.....	50.32.020
Time for filing petition for review.....	34.05.542	Procedure	50.32.040
Type of relief.....	34.05.574	Charges by, prohibited.....	50.32.110
Legislative Review (Part VI)		Commissioner, review of decisions.....	50.32.070
Committee objections to agency action or failure to adopt rule—Statement in register and WAC—Suspension of rule.....	34.05.640	Compensation of	50.32.010
Joint administrative rules review committee —Members—Appointment—Terms—Vacancies.....	34.05.610	Conduct of.....	50.32.010
Recommendations by committee to legislate.....	34.05.650	Conduct of hearings by.....	50.32.060
Review and objection procedures— No presumption established.....	34.05.660	Confidential Decisions, defined	50.13.050
Review of existing rules—Policy statement, guidelines, issuances—Notice—Hearings.....	34.05.630	Confidential Information, access to	50.13.050
Review of proposed rules—Notice.....	34.05.620	Contributions Assessment appeal to.....	50.32.030
Technical Provisions (Part IX)		Filing of	50.32.030
Captions and headings	34.05.900	Procedure.....	50.32.050
Effective date—Application—1988	34.05.902	Costs.....	50.32.100
Severability	34.05.901	.....	50.32.190
ADVISORY COUNCIL, State		Decision of,	
Representation	50.12.200	Appeal from	50.32.050
Salary & Expenses	50.12.200	.....	50.32.070
AGENT, STATUTORY, SERVICE	50.24.120	Finality of	50.32.040
Not confined to civil action.....	50.24.120	.....	50.32.050
AGENTS AND SOLICITORS—SERVICES		Notification of	50.32.040
NOT EMPLOYMENT	50.04.230	.....	50.32.050
.....	50.04.235	Review of, by commissioner.....	50.32.070
AGRICULTURAL LABOR.....	50.04.150	Defined.....	50.32.010
.....	50.04.155	Establishment of.....	50.32.010
Suitable work.....	50.20.100(2)	Examiner, appointment, qualifications, etc	50.32.010
ALIENS		Experience rating procedure	50.29.070
Disqualification for services performed by.....	50.20.098	.....	50.32.050
Non-disqualification if approved or lawfully admitted	50.20.098	Judicial Review (see same this index)	
ALTERNATIVE BASE YEAR (See also BASE YEAR)		Power of	50.32.070
Defined	50.04.020	Records of	50.32.060
Application for initial determination of disability— Special Base Year—Alternative Special Base Year	50.06.030(4)	Review of, by Commissioner.....	50.32.070
APPEALS		Waiver of filing time limitation	50.32.075
Costs created by.....	50.32.190	Witness fees, costs	50.32.100
From,		.....	50.32.110
Assessment of Penalties.....	50.12.220	APPEARANCE OF COMMISSIONER (SUPERIOR COURT) NOTICE OF	50.32.120
.....	50.32.030	APPELLATE PROCEDURE	
Benefit charges.....	50.29.070	Administrative hearings,	
Benefit claim determination	50.32.020	Benefit appeals	50.32.040
Benefit overpayment liability determination.....	50.20.190	Conduct of.....	50.32.060
Commissioner decisions	50.12.220	Contributions appeals.....	50.32.050
Decision of appeal tribunal.....	50.32.070	Experience rating appeals.....	50.29.070
Decision of commissioner	50.32.120	.....	50.32.050
Definitions.....	34.12.020	Commissioner's review	50.32.080
		Court Review	50.32.120
		Burden of Proof upon party attacking Commissioner's decision.....	50.32.150
		Jurisdiction of the courts	50.32.150
		Venue of interest claims	50.32.140
		Finality, all decisions by agreement	50.32.170

Remedies of title exclusive	50.32.180	Calendar quarter defined.....	50.04.050
APPELLATE REVIEW BY COMMISSIONER	50.32.080	Charges to employer account	
APPLICATION FOR INITIAL DETERMINATION		Appeals, further	50.29.070
Defined	50.20.140	Notice of	50.29.065
Filing of	50.20.140	Request for Review of Redetermination	50.29.070
Notice of filing to		Civil Action, recovery of payment by	50.29.190
Applicant	50.20.150	Claim for	50.20.140
Employer	50.20.150	Collections (see COLLECTIONS)	
Employing unit	50.20.150	Combination of wage credits	50.12.050
Temporary Total Disability	50.06.030	Computation of benefits (see also COMPUTATION OF).....	50.20.120
APPLICATION FOR SUITABLE WORK		Deduction from	50.20.130
Disqualification for refusal	50.20.080	Defined	50.04.040
APPOINTMENTS AND REGULATIONS CONTINUED.....	50.98.020	Definitions	
APPRAISAL PRACTITIONER SERVICES.....	50.04.255	Additional	50.22.010
ARBITRARY EMPLOYING UNIT REPORTS		Eligibility period.....	50.22.010
BY COMMISSIONER.....	50.12.080	Exhaustee	50.22.010
ASSESSMENT		Regular.....	50.22.010
Finality of, if no timely appeal	50.32.030	Denial or Allowance of.....	50.20.180
Order & Notice of Appeal from	50.32.030	.....	50.20.080
ASSESSMENT FOR CONTRIBUTIONS		Determination (see Initial Determination under BENEFITS)	
Jeopardy.....	50.24.080	Finality of, if not timely appeal	50.32.020
Judgment on.....	50.32.150	Notice of	50.20.150
Order and Notice of.....	50.24.070	Disability (see DISABILITY)	
Remedies exclusive	50.32.180	Disqualification for	
ASSIGNMENT FOR BENEFIT OF CREDITORS,		Aliens, service performed by	50.20.098
LIEN FOR CONTRIBUTIONS	50.24.060	Athlete, between seasons.....	50.20.113
ASSIGNMENT OF BENEFITS VOID	50.40.020	Discharge	50.20.060
ASSOCIATION AN EMPLOYER	50.04.080	Educational, between terms.....	50.44.050
ATHLETES, disqualification for benefits.....	50.20.113	Failure to attend workshop or training	50.20.044
ATTORNEY FEES (see also FEES).....	50.13.080	Failure to report in person	50.20.010(1)
.....	50.32.110	False Statement.....	50.20.070
.....	50.32.160	Felony	50.20.060
ATTORNEY GENERAL:		Labor Dispute	50.20.090
Actions instituted by.....	50.12.150	Misconduct	50.20.060
Assistants	50.13.080	Cancellation of hourly wage credits due	
Duty to assign	50.12.150	to gross misconduct	50.20.066
Compensation & salaries of, fixed by	50.12.150	Misrepresentation	50.20.070
Compensation from Administrative Fund	50.12.150	Receipt of Industrial Insurance Disability Benefits	50.20.085
Exclusivity of Assignment	50.12.150	Refusal to work	50.20.080
AVAILABILITY (Eligibility Conditions)		School Enrollment.....	50.20.095
Defined	50.20.010	Termination of.....	50.20.050
AVERAGE ANNUAL WAGE COMPUTATION.....	50.04.355	.....	50.20.060
AVERAGE WEEKLY WAGE, COMPUTATION	50.04.355	Unavailable to work	50.20.010(3)
		Untimely claim	50.20.010(2)
		Vacation, unemployment due to.....	50.20.115
		Voluntary quit.....	50.20.050
B		Domestic Violence	
BANKRUPTCY, LIEN FOR CONTRIBUTIONS		Leaving work.....	50.20.050(2)
IN EVENT OF.....	50.24.060	Suitable work.....	50.20.100
BARBERS SERVICES EXEMPTED	50.04.225	Duration of	50.20.120
BASE OF OPERATIONS, AS DETERMINING		Educational, between terms	50.44.050
EMPLOYMENT		Eligibility (conditions for receipt of).....	50.20.010
Interstate employment	50.04.110	Exemption of, from execution	50.40.020
Maritime service.....	50.04.170	Experience Rating Accounts, benefits charged to	50.29.020
BASE YEAR (see also ALTERNATIVE BASE YEAR)		Extended Benefits (see also, EXTENDED BENEFITS)	
Application for initial determination of disability—		False statements to obtain	50.36.010
Special Base Year—Alternative Special Base Year.....	50.06.030	Financing of (see also SPECIAL COVERAGE)	
Defined	50.04.020	Nonprofit employers.....	50.44.010
Wages,		Political Subdivisions	50.44.030
Computation of	50.98.100	.....	50.44.035
Requirements in	50.20.010	State Employees	50.44.020
BENEFITS		Future benefits, deduction from for overpayment	50.20.190
Able and available for work, to be eligible for	50.20.010	Initial determination,	
Academic year	50.44.050	Appeal from.....	50.32.020
Accounts in benefit fund and disbursements	50.16.020	Application for, as eligibility requirement	50.20.010
.....	50.16.030	Application for, defined	50.20.140
Additional Benefits (see also, ADDITIONAL BENEFITS)		General conditions prescribed by (for benefit payments)....	50.20.140
Allowance or denial of.....	50.20.180	Issued promptly on application for	50.30.140
.....	50.20.043	.....	50.20.150
Amount of, payable	50.20.120	Notification of	50.20.150
Appeals from assessment of overpayment		Redetermination of.....	50.20.160
(see also, APPEALS this index)	50.20.190	Institutions of Higher Education, terms	
Appeals from benefits determination		& conditions of payment for services	50.44.050
(see also, APPEALS this index)	50.32.020	Labor dispute disqualification	50.20.090
Appellate procedure	50.32.040	Liability for repayment of.....	50.20.190
Assessment of Overpayment.....	50.20.190	Maximum and minimum amount of	50.20.120
Assignment or pledge of, void	50.40.020	Noncharging	50.29.020
Base year, as determinative of.....	50.04.020		
Benefit year defined	50.04.030		

Nondisqualification for		Treasurer, faithful performance bond	50.16.020
Aliens services, approved or lawfully admitted	50.20.098	.....	50.16.050
Commissioner approved training	50.20.043	BONUSES AS REMUNERATION	50.04.320
Jury duty	50.20.117	BURDEN OF PROOF, COURT REVIEW	50.32.150
Labor dispute, non association with	50.20.090		
School enrollment, approved or available for work	50.20.095	C	
Voluntary quit with good cause	50.20.050	CALENDAR QUARTER DEFINED	50.04.050
Nonliability of state for overpayment of	50.20.200	CASUAL LABOR NOT EMPLOYMENT	50.04.270
Not assignable	50.40.020	CHARGES (see COSTS; also FEES)	
Not charged	50.29.021	CHARITABLE ORGANIZATIONS	50.44.010
Overpayment		CHILD EMPLOYED BY PARENT NOT IN	
Assessment of	50.20.190	EMPLOYMENT	50.04.180
Charge off of uncollectible accounts	50.24.200	CHILD SUPPORT OBLIGATIONS DEDUCTED	
Collection of	50.20.190	AND WITHHELD	50.40.050
Limitation on	50.24.190	Defined	50.40.050
Compromise of	50.24.020	Limitation on Deduction	74.20A.090
Determination, when final	50.20.190	CITATION OF ACT	50.01.005
Waiver of	50.20.190	CIVIL ACTIONS	
Payment of	50.20.170	Attorney General shall institute and prosecute	50.12.150
Pensions, Govt. or Private	50.04.323	Benefit payments, recovery by	50.20.190
Previously uncovered services, affect of		Commenced under prior laws	50.98.030
upon experience rating account	50.98.100	Contributions, collection by	50.24.120
Profiling	50.20.011	.....	50.24.180
Reasonable assurance defined	50.44.053	Service on Secretary of State	50.24.120
Reciprocal State arrangements	50.12.050	CLAIMS	
Recovery of payment	50.20.190	Application for Initial Determination definition of	50.20.140
Redetermination of benefit determinations	50.20.160	Basic health care plan for claimants	50.20.210
Denial of	50.20.160	Benefits	
Finality of, if no timely appeal	50.32.020	Application for initial determination	50.20.140
Notice of	50.20.160	Certification of eligibility	50.20.140
Reduction of, by other remuneration	50.20.130	Definition of "claim for benefits"	50.20.140
Registration for work to be eligible for	50.20.010	Definition of "claim for waiting period"	50.20.140
Repayment of overpaid account	50.20.190	Eligibility requirement	50.20.010
Retirement plans	50.04.323	Filing	50.20.140
Separation, Job		For,	
Disqualifying	50.20.050(1)	Combination of Wages	50.12.050
Good cause	50.20.050(2)	Contributions	
Shared Work	50.60.100	not paid when due	50.24.050
Source of funds	50.16.040	refunds	50.24.150
Special Benefit Year (Temporary Total Disability)	50.06.030	Interest	
Stalking, leaving work	50.20.050(2)	not paid when due	50.24.050
Suitable work (see SUITABLE WORK)	50.20.100	refunds	50.24.150
Supplemental Additional	50.22.105	Penalties not paid when due	50.24.050
Training	50.22.140	Reciprocal arrangement for payment of benefits	50.12.050
.....	50.22.150	Shared Work	50.60.100
Vested Rights, no	50.40.040	Waiting period	
Vocational Training, Commissioner approved	50.20.043	Eligibility requirements for	50.20.010
Wages		Limitations	50.20.020
Prorating charges, for	50.29.030	CLASSIFICATION OF EMPLOYERS	
Requirements to be eligible for	50.04.320	EXPERIENCE RATING	
.....	50.20.120	CLEARING ACCOUNT, UNEMPLOYMENT	
Waiting period,		COMPENSATION FUND	50.16.020
Eligibility requirements for	50.20.010	CLERK'S FEES NOT CHARGED (see also FEES)	50.32.190
Increase of (see Disqualifications under BENEFITS)		.....	50.32.110
Limitations	50.20.020	COLLECTIONS	
Waiver of, void	50.40.010	Benefit overpayments,	
Weekly amount of	50.20.120	Civil action	50.20.190
Computation of deduction	50.20.130	Compromise of	50.24.020
BENEFIT CHARGES TO EMPLOYER ACCOUNTS		Deduction from future benefits	50.20.190
Appeals of	50.29.070	For other agencies	50.20.190
Notice of	50.29.070	Limitation on	50.24.190
Not Charged	50.29.020	Contributions,	
BENEFIT YEAR		Adjustments and refunds	50.24.150
Backdating	50.04.030	Assessment, jeopardy	50.24.080
Definition	50.04.030	Assessment, order and notice of	50.24.070
Hours worked, required to establish	50.04.030	Civil Action	50.24.120
Limitations	50.04.030	.....	50.24.180
Special (temporary total disability)	50.06.030	Compromise of	50.24.020
BOND		Distrain Seizure & Sale	50.24.090
In Lieu of,		Procedure	50.24.100
Delivering property of delinquent employer	50.24.110	Erroneous collections of	50.24.150
Injunction	50.24.180	Finance Special Unemployment	
Nonprofit Organization, election of payments		Assistance	50.24.014
in lieu of contributions—Bond or deposit	50.44.070	Injunction against delinquent employer	50.24.180
On Appeal	50.32.130	Lien foreclosure	50.24.120
.....	34.04.130	Limitation on	50.24.190
Sheriff, not to require	50.12.170	Notice and order to withhold and deliver	50.24.110

Remedies cumulative	50.24.140	Distribution of	50.12.160
Remedies exclusive	50.32.180	.....	50.20.140
Payment in lieu of Contribution Political Subdivisions, recovery by civil action	50.24.125	Reports of, Annual report to Governor	50.12.010
COMBINATION OF WAGE CREDITS	50.12.050	Representatives of, delegation of powers to	50.12.020
COMMERCIAL CANNING AND FREEZING	50.04.150	.....	50.20.140
COMMISSIONER		Review of local government tax system	50.44.035(6)
Adjustment or refund by	50.24.150	Right to make arbitrary reports	50.12.080
Administration of		Rules, adopted by	50.12.040
Act	50.04.290	Distribution of	50.12.160
.....	50.12.010	State advisory council appointed by	50.12.200
Contingency Fund	50.12.200	Subpoena (for testimony, books and records), issuance by	50.12.130
.....	50.16.010	Treasurers appointed by,	
Family services and programs	50.08.030	Administrative Contingency Fund	50.16.020
Unemployment Compensation Fund	50.16.010	Administrative Unemployment Compensation Fund	50.16.020
Advisory Council, appointed by	50.12.200	Waiver of	
Agreement with federal government	50.12.180	Filing time limitations	50.32.075
Appeal to	50.32.070	Overpayment	50.20.190
Appeal to courts, certified record filed by	50.32.120	Penalties	50.12.220
Appeal tribunal decisions reviewed by	50.32.080	COMMISSIONER'S RECORD OF PROCEEDINGS	50.32.120
Establishment of	50.32.010	COMMISSIONS AS WAGES	50.04.320
Appointment of	50.08.010	COMPOSITIONS (INSOLVENCY), LIEN FOR CONTRIBUTIONS IN EVENT OF	50.24.060
Approved training	50.20.043	COMPROMISE OF BENEFIT OVERPAYMENTS	50.24.020
Authority to		COMPROMISE OF CONTRIBUTIONS AND INTEREST	50.24.020
Compromise	50.24.020	Misrepresentation to obtain, penalty for	50.36.010
Deduct & withhold child support obligations	50.40.050	COMPULSORY PRODUCTION OF RECORDS AND INFORMATION	
Determine confidentiality of records	50.13.030	COMPUTATION OF	
Establish rules for noncharging Relief for On-The-Job training	50.12.240	Average Annual Wage	50.04.355
Issue notice & order to withhold & deliver property	50.24.110	Average Weekly Wage	50.04.355
Requisition funds from Unemployment Trust Fund	50.16.030	Base Year Wages	50.98.100
Charges by, prohibited	50.32.110	Benefits	50.20.120
Compensation of	50.08.010	Benefit ratio	50.20.027
Confidential decisions, defined	50.13.050	Rounding calculation	50.20.120
Custodians appointed by		.....	50.20.130
Administration Contingency Fund	50.16.020	Benefit amounts based on wages paid by employers liable for payments in lieu of contributions	50.44.060(3)
Unemployment Compensation Fund	50.16.020	Date	50.29.010
Decisions of,		Federal interest fund	50.16.070
Appeal from	50.32.080	.....	50.16.115
Costs incurred by appeal from	50.32.190	Rounding calculation	50.04.323
Delivery of	50.32.080	Local Government Tax Rate	50.44.035(4)
Finality of	50.32.090	Benefit Cost Ratio	50.44.035(3)
Prima facie correct	50.32.150	Reserve Account	50.44.035(2)
Defined	50.04.060	Reserve Ratio	50.44.035(2)
Determiner of good cause in voluntary quit	50.20.050	Payments in lieu of contributions	50.24.010
Distraint, seizure, & sale		Nonprofit organizations	50.44.060(2)
Power to	50.24.090	Predecessor & Successor Employer	
Procedure	50.24.100	Contribution Rates	50.29.062
Employment Stabilization	50.12.190	Qualified Employer	50.29.010
Federal Government, duty to cooperate with	50.12.180	Rate of insured unemployment	50.22.060
Inspection of, Employing Unit Records	50.12.070	State payments & exclusions	50.44.020
Limitation on power to reconsider determinations made	50.20.160	Total extended benefit amount	50.22.050
Penalties, waiver of	50.12.220	Weekly extended benefit amount	50.22.040
Personnel appointed by	50.08.020	CONCLUSIVENESS OF ASSESSMENTS	50.32.030
.....	50.12.020	CONFIDENTIAL INFORMATION	50.13.010 et seq.
.....	50.16.020	CONSTITUTIONALITY OF PROVISIONS	50.98.070
Salaries and compensation of	50.08.020	CONSTRUCTION	
Petition for Review by	50.12.031	Actions commenced under prior laws	50.98.030
Petition for Review by	50.32.070	Acts repealed	50.98.040
Power and duties of	50.04.290	Appointments & Regulations, continued	50.98.020
.....	50.12.010	Base Year Wages to include remuneration paid for previously uncovered services	50.98.100
.....	50.04.310	Conflicting acts repealed	50.98.050
.....	50.04.030	Effective date	50.98.080
.....	50.12.070	Federal Unemployment Tax Act, interpretation in compliance with	50.98.110
.....	50.12.080	Liberal	50.01.010
.....	50.12.030	Repealed acts not reenacted	50.98.060
Power to		Saving Clause	50.98.010
Charge off uncollectible accounts	50.24.200	Severability of provisions	50.98.070
Determine refund & adjustment of contributions	50.24.150	Compliance with FUTA	50.44.080
Reconsider denial of determination	50.20.160	Mandatory coverage of employees of political subdivision	50.44.090
Reconsider determination	50.20.160	CONTEMPT. . . FAILURE TO PRODUCE RECORDS	50.12.100
Terminate & extend elections of nonprofit organizations	50.44.070	CONTINGENCY FUND (see ADMINISTRATIVE CONTINGENCY FUND)	
Reciprocal benefit arrangements, authority to enter	50.12.050		
Reciprocal coverage arrangements, authority to enter	50.12.060		
Records, destruction of, by	50.12.140		
Refund & Adjustment of Contributions, power to determine	50.24.150		
Regulations, adopted by	50.12.040		

CONTRACTOR

- Guarantee to principal for contributions 50.24.130
- Liability for contributions, interest, & penalties 50.24.130
- Subcontractors Exempted 50.04.145
- When an employer 50.04.100
- When in employment 50.04.100

CONTRIBUTION RATE—SOLVENCY SURCHARGE 50.29.041

CONTRIBUTIONS

- Adjustments & refunds 50.24.150
- Agreements by employees to pay, void 50.40.010
- Appeals (see APPEALS)
- Appellate Procedures 50.32.050
- Arbitrary Report 50.12.080
- Assessment (see also ASSESSMENTS, ORDER & NOTICE OF, and NOTICES)
 - Jeopardy 50.24.080
 - Order & notice of 50.24.070
 - Order & notice to withhold & deliver 50.24.110
 - Service of, procedure 50.24.070
- Basis of tax 50.24.010
- Benefit ratio 50.29.027
- Charge-off of uncollectibles 50.24.200
- Civil Actions (see CIVIL ACTIONS)
- Collections (see COLLECTIONS)
- Compromise Agreements
 - Benefit overpayment, claim of 50.24.020
 - Commissioner, authority to 50.24.020
 - Contributions, claim for 50.24.020
 - Finality of 50.24.020
 - Penalty for 50.36.010
 - Tax Claims 50.24.020
- Contractor’s liability for 50.24.130
- Court action to collect 50.24.120
- Deduction from wages 50.24.010
 - Invalidity of 50.40.010
- Defined 50.04.070
 - 50.04.072
 - 50.04.073
- Delinquent, 50.16.010
 - Interest on 50.24.040
- Distraint, Seizure & Sale
 - Mode of collection 50.24.090
 - Procedure 50.24.100
- Due and payable upon termination or disposal of business 50.24.210
- Due dates 50.24.015
 - 50.24.010
- Election of Coverage 50.24.160
- Employment and training trust fund 50.24.015
- Erroneously paid to U.S. or another state 50.24.030
- Experience rating (see EMPLOYER) 50.29.010 et seq.
- Failure to file reports 50.12.220
 - 50.36.010
 - 50.36.020
- Federal interest fund 50.16.010
 - 50.16.070
 - 50.16.115
- Financing Special Unemployment 50.24.014
- Fractional Part of Cent 50.24.010
- Fund balance ratio 50.29.025
- Injunction Proceedings, against delinquent employers 50.24.180
- Interest 50.32.030
 - Limitation on accrual of 50.24.040
 - Waiver of 50.24.040
- Jeopardy Assessments 50.24.080
- Joint Accounts, employers 50.24.170
- Liens (see also Liens this index) 50.24.060
 - Attachment of, grounds for 50.24.060
 - Filing 50.24.050
 - County Auditor, with to be valid 50.24.050
 - Effect of 50.24.050
 - Fees for 50.24.050
 - Secretary of State, with 50.24.050
 - Warrant, shall become 50.24.115
 - Limitation on proceedings for collection 50.24.190
 - Local Government taxes 50.44.035(7)
 - Paid to wrong state 50.24.030
 - Payments by nonprofit organizations 50.44.060(1)
 - Payment in lieu of contributions (see same title this index)
 - not remuneration 50.24.010
 - Penalties 50.12.220
 - 50.36.010
 - 50.36.020
 - Principal’s liability for 50.24.130
 - Priority of ESD Liens 50.24.050
 - 50.24.060
 - Proceedings to recover 50.12.080
 - Rates 50.12.010
 - 50.24.010
 - 50.29.022
 - 50.29.025
 - 50.29.026
 - Redetermination & correction of 50.29.080
 - Records (see RECORDS)
 - Refunds and adjustments 50.24.150
 - Refusal or failure to pay, penalty for 50.36.010
 - 50.36.020
 - Remedies cumulative 50.24.140
 - Reports (see REPORTS)
 - Restraint of collection 50.32.180
 - Subcontractors 50.24.130
 - Successor Liability 50.24.210
 - Taxes
 - Amount of wages subject to 50.24.010
 - Schedule 50.29.025
 - Uncollectible Accounts, charge off of 50.24.200
 - Wages, deemed paid when contractually due 50.24.015
 - Warrant
 - Authorized 50.24.115
 - Enforcement 50.24.115
 - filing 50.24.115
 - lien 50.24.115
 - Withhold & Deliver Property of delinquent employer 50.24.110

CORPORATE OFFICERS, ELECTION OF COVERAGE 50.04.165

COSMETOLOGISTS SERVICES EXEMPTED 50.04.225

CUT-OFF DATE 50.29.010

D

DEFINITIONS

- Additional Benefits 50.22.010(5)
- Additional Benefit Eligibility Period 50.22.010(9)
- Additional Benefit Period 50.22.010(7)
- Adjudicative Proceeding 34.05.010
- Advisory Council 50.12.200
- Agency 34.05.010
- Agency Action 34.05.010
- Agency Head 34.05.010
- Agricultural Labor 50.04.150
- American Vessel 50.04.170
- Appeal Tribunals 50.32.010
- Application for Initial Determination 50.24.140
- Availability (Eligibility Conditions) 50.20.010
- Average Wage (Annual & Weekly) 50.04.355
- Base Year 50.04.020
 - Special Base Year (Temp. Total Disability) 50.06.030
- Benefits 50.04.040
- Benefit ratio Computation 50.29.027
- Benefit Year 50.04.030
 - Special Benefit Year (Temp. Total Disability) 50.06.030
- Calendar Quarter 50.04.050
- Casual Labor 50.04.270
- Claim for Benefits 50.20.140
- Claim for Waiting period 50.20.140
- Child Support Enforcement Agency 50.40.050(8)
- Child Support Obligation 50.40.050(7)
- Commissioner 50.04.060
- Computation date 50.29.010
- Confidential Decisions 50.13.050
- Contributions 50.04.070
 - 50.04.072
 - 50.04.073
- Rates 50.29.025
- Crew Leader 50.04.155
- Cutoff Date 50.29.010
- Delinquent Contributions 50.24.040

Delinquent Payments in Lieu of Contributions	50.44.060(2)	50.24.040
Dislocated worker	50.04.075	50.44.060(2)
Earnings (exempt from lien)	74.20A.090	
Eligibility Period, extended benefits	50.22.010	
Emergency	50.13.060(3)	
Employer	50.04.080	
American	50.04.116	
Qualified	50.29.010	
Successor & predecessor	50.04.320	
Employer Experience Rating	50.29.010	
Employing Unit	50.04.090	
Employment	50.04.100	
.....	50.04.116	
.....	50.04.140	
.....	50.44.040	
Employment Office	50.04.290	
Exhaustee	50.22.010	
Experience Rating,		
Accounts	50.29.020	
Employer	50.29.010	
Year	50.29.010	
Extended Benefits	50.22.010	
Extended Benefit Period	50.22.010	
Farm Operator	50.04.155	
Good Cause, voluntary quit	50.20.050	
Handicapped	50.12.210	
Institution of Higher Education	34.05.010	
.....	50.44.037	
Interpretive Statement	34.05.010	
Investment Company	50.04.230	
License	34.05.010	
Local Government Tax	50.44.035	
Localized Service	50.04.120	
Marginal labor force attachment	50.20.015	
Misconduct	50.04.293	
National 'on' indicator, National 'off' indicator	50.22.010	
Nonprofit Organization	50.44.010	
.....	50.44.060	
Occupational Forecast	50.38.020	
Pay Period	50.04.280	
Payments in Lieu of Contribution	50.04.295	
.....	50.04.072	
.....	50.44.060	
Payroll	50.29.010	
Person	50.36.020	
Personal Services	50.04.100	
Policy Statement	34.05.010	
Pool Accounts	50.44.030	
Previously Uncovered Services	50.98.100	
Qualified Employer	50.29.010	
Quarter Calendar	50.04.050	
Rate Year	50.29.010	
Reasonable assurance	50.44.052	
Regular Benefits	50.22.010	
Remuneration	50.04.320	
.....	50.04.323	
Rule	34.05.010	
School	50.20.095	
Shared Work	50.60.020	
Special Attention Service	50.12.210	
State 50.04.300		
State Law	50.22.010	
State 'on' indicator, State 'off' indicator	50.22.010	
State or Local Child Support Enforcement Agency	50.40.050(8)	
Suitable Work	50.20.100	
Suitable Work, Trade Readjustment Trainee	50.20.118	
Support Enforcement Agency	50.40.050(8)	
Unemployed Individual	50.04.310	
Wage, average Annual	50.04.355	
Wage Credits	50.04.320	
Wages, for tax & benefit purposes	50.04.320	
Wages, prorating benefit changes	50.29.030	
Waiting Period	50.20.020	
Week	50.04.360	
Work, Suitable	50.20.100	
Work, Suitable, Trade Readjustment Trainee	50.20.118	
DELINQUENT		
Contributions	50.16.010	
.....		50.24.040
Payments in Lieu of contributions		50.44.060(2)
DELIVER, Property of delinquent employer		
(see also WITHHOLD)		
Authorization to		50.24.110
Penalty for non-deliverance		50.24.110
Procedure		50.24.110
DENIAL		
Of,		
Benefits		50.20.180
Refund, contributions and interest		50.24.150
DEPARTMENT OF CORRECTIONS		
Inmate work program		72.09.100
DEPOSITIONS		50.12.130
DETERMINATION		
Appeal from (see APPEALS)		
Benefit claims (initial determination)		50.20.140
Contributions claims		50.24.150
Liability for benefit overpayment		50.20.190
Marginal labor force attachment		50.20.015
Redetermination (see REDETERMINATION)		
Remedies exclusive		50.32.180
DISABILITY		
Temporary Total		
Alternative Special Base Year		50.06.030
Amount of, payable		50.06.040
Application for initial determination		50.06.030
Benefits, Right to		50.06.040
Crime victims		50.06.010
.....		50.06.020
.....		50.06.030
Eligibility, allowable beneficiaries		50.06.020
Non-severability, of chapter		50.06.910
Purpose of		50.06.010
Special Base Year		50.06.030
Special individual benefit year		50.06.030
Wages & Time Worked for Prior Claims, effect		50.06.050
Permanent Total		
Compensation		51.32.060
Definition		51.08.160
Partial restoration of earning power		51.32.090
Permanent Partial Definition		51.08.150
DISABILITY AND RETIREMENT PAYMENTS,		
NOT WAGES		50.04.330
DISBURSEMENT OF FUNDS		50.16.030
DISCHARGE OF WORKER		50.20.060
Concealing cause of		50.36.030
DISCLOSURE—CAMPAIGN FINANCES—		
LOBBYING—RECORDS		
Certain personal and other records exempt		42.17.310
DISCONTINUANCE OF UNEMPLOYMENT TRUST FUND. 50.16.040		
Dislocated worker		50.04.075
DISLOCATED FOREST PRODUCTS WORKERS,		
PROGRAMS FOR		
Conflict with federal requirements		50.70.901
Department of Natural Resources duties		50.70.050
Effective dates		50.70.902
Employment Opportunities		50.70.030
Recruitment		50.70.040
Severability		50.70.900
DISMISSAL PAYMENTS, WHEN WAGES		50.04.350
DISPLACED WORKERS ACCOUNT—		
COMPENSATION AND RETRAINING		50.12.280
DISQUALIFICATION FOR BENEFITS		
(see Disqualification under BENEFITS)		
DISSOLUTION, LIEN FOR		
CONTRIBUTIONS IN EVENT OF		50.24.060
DISTRAINT, SEIZURE AND SALE		50.24.090
Procedure		50.24.100
DIVISIONS ESTABLISHED		50.08.020
DOMESTIC		
Service not employment unless		50.04.160
Voluntary quit		50.20.050
DOMESTIC VIOLENCE		
Benefits noncharged		50.29.020
Job search monitoring		50.20.240
Leaving work		50.20.050(2)
DURATION OF BENEFITS		50.20.120

E

EDUCATION		Employment Security benefits during Work Force	
Cooperation with work force training and		Training, eligibility, Noncharging	50.29.020
education coordinating board	50.12.245	Quarterly notice	50.29.065
Disqualification for benefits	50.20.095	Shared Work	50.60.110
Institutions of Higher Education		Insolvency of,	
Coverage, services excluded from	50.44.040	Lien for contributions in event of	50.24.060
Defined	50.44.037	Jeopardy assessment	50.24.080
Terms & Conditions of Payable benefits	50.44.050	Joint accounts	50.24.170
Non-disqualification for benefits, determining factors	50.20.095	Lien filing fees, collectible from	50.24.050
ELECTION OF COVERAGE		Notice of application for initial determination	50.20.150
Approval by commissioner	50.24.160	Penalties, for violations	50.36.020
Class or group	50.24.160	Predecessor & successor	
Corporate Officers	50.04.165	Contribution Rates, computation of	50.29.025
Establishment, if distinct	50.24.160	Defined	50.04.320
Exempt services	50.24.160	Qualified, definition	50.29.010
Multi-state services	50.04.115	Records (see RECORDS)	
Out-of-state services	50.04.115	Reports (see REPORTS)	
	50.12.060	Service on	50.24.120
Termination of	50.24.160	State & its political subdivision as	50.04.090
	50.44.030	Waiver of Rights Void	50.40.010
ELECTION OF FINANCING		EMPLOYER EXPERIENCE RATING	
Payments in lieu of contributions	50.44.060	Definitions	50.29.010
ELIGIBILITY FOR BENEFITS	50.20.010	EMPLOYING UNIT	
	50.04.355	Concealing cause of discharge	50.36.030
	50.04.030	Defined	50.04.090
Period, defined	50.22.010	Employer for tax purposes	50.04.080
EMPLOYEE, ADVISORY COUNCIL REPRESENTATIVE	50.12.200	Notice of application for initial determination	50.20.150
EMPLOYEE LEASING AGENCY	50.04.245	Records (see RECORDS)	
EMPLOYER		Reports (see REPORTS)	
Absent, service on	50.24.120	EMPLOYMENT	
Actions against (see specific headings under ACTIONS)		Covered Services	
Advisory Council Representation	50.12.200	Agricultural labor	50.04.155
American, defined	50.04.116	Appraisal practitioners	50.04.255
Appeals, right to (see APPEALS)		Domestic service	50.04.160
Compromise of contributions & interests due	50.24.020	Foreign degree, granting institutions, employee	
Computations relating to (see COMPUTATION OF)		services localized in country of domicile	50.04.125
Contractor or subcontractor as	50.04.100	Foreign government services	50.04.210
	50.24.130	Maritime service	50.04.170
Contributions		Nonresident aliens	50.04.206
Amount of	50.24.010	Service covered by federal act (by agreement)	50.04.220
Definition	50.04.070	Services performed by aliens	50.04.205
	50.04.072	Defined	50.04.100
Due Date	50.24.010	Employee leasing agency	50.04.245
	50.24.025	Exception tests	50.04.140
Rate Determination	50.29.070	Exemptions (see EXCEPTED SERVICES)	
Appeals, further	50.29.070	Interstate,	
Notice of	50.29.070	Localized service	50.04.120
Request for Review or Redetermination	50.29.070	Out-of-state service, election	50.04.115
Procedure for Redetermination & correction of	50.29.080		50.04.116
Delinquent in contribution payments		Situs of services	50.04.110
Assessment, notice of	50.24.070	Maritime service	50.04.170
Distraint, seizure & sale	50.24.090	Personal services constitute	50.04.100
Procedure	50.24.100	Registration for work, eligibility requirement for benefits	50.20.010
Refund of excess money	50.24.100	Services Excluded under	50.44.040
Injunction proceedings	50.24.180	Services referral agency	50.04.245
Notice of assessment	50.24.070	Situs of Services	50.04.110
Dissolution of assets,		Stabilization of	50.12.190
Lien for contribution in event of	50.24.060	Suitable work	50.20.100
Duty to		Exception	50.20.110
Maintain accurate work records	50.12.070	Temporary services agency	50.04.245
Post & maintain regulation prescribed		Travel services	50.04.232
by Commissioner	50.20.140	EMPLOYMENT OFFICE DEFINED	50.04.290
Election of Coverage		EMPLOYMENT SECURITY DEPARTMENT	
Multi-state services	50.12.060	Confidential information	50.13.080
Out-of-state services	50.04.115	Private Contracting Parties, right to release to	50.13.080
	50.12.060	Procedure for release	50.13.060
Political subdivisions	50.24.160	Duty to make prompt initial determination	50.20.140
	50.44.030	Establishment of	50.08.010
	50.44.035	Right to inspect Employing Unit Reports	50.12.070
Public utility districts	50.24.160	Unemployment Compensation Division	50.08.020
Experience Rating		Washington State Employment Service Division	50.08.020
Accounts maintained for	50.29.020	EMPLOYMENT SERVICE DIVISION	
Benefits not charged	50.29.021	Delegation of, to federal agency	50.08.020
Credit	50.16.030	Employment offices established	50.12.180
Definition	50.29.010	Establishment of	50.08.020
		Federal conformity and cooperation	50.12.180
		Financing of	50.16.050
		Handicapped, special attention service	50.12.210

Personnel, appointment of	50.08.020	Training benefits program—Intent	50.22.130
Supervisor of	50.08.020		
ESTATE, an employer	50.04.080	F	
EXAMINERS, APPEAL	50.32.010	FAILURE TO PRODUCE RECORDS-CONTEMPT	50.12.100
EXCEPTED SERVICES		FAILURE TO SUBMIT REPORTS	50.12.080
Agents & solicitors	50.04.230	FALSE RETURNS	50.24.190
Agricultural labor	50.04.150	.....	50.36.010
Appraisal practitioners	50.04.255	.....	50.36.020
Barbers	50.04.225	FALSE STATEMENT	
Casual labor	50.04.270	Disqualification for benefits	50.20.070
Contractors	50.04.140	Prosecution for	50.36.010
Cosmetologists	50.04.225	.....	50.36.020
Domestic services	50.04.160	.....	50.36.030
Enrolled student & family for school	50.44.040(8)	FAMILY ILLNESS, nondisqualification for voluntary quit	50.20.050
.....	50.44.040(9)	FAMILY SERVICES-NOT EMPLOYMENT	50.04.180
Family employment	50.04.180	FEDERAL FUNDS	
Federal unemployment compensation acts, services covered by	50.04.220	Federal targeted jobs tax credit program	50.16.080
Foreign governmental services	50.04.210	Interest fund	50.16.010
Hairdressers	50.04.225	.....	50.16.015
Inmate Custodial	50.44.040(6)	.....	50.16.070
Insurance agents & real estate brokers	50.04.230	Repayment of loans of	50.16.030
Maritime foreign service	50.04.170	Replacement of	50.16.060
Massage practitioners	50.04.223	Unemployment Compensation Administration Fund financed by	50.16.050
Musicians or Entertainers	50.04.148	Unemployment Trust Fund	50.16.020
Newsboys	50.04.240	.....	50.16.030
Non-government preschool	50.44.040(12)	.....	50.16.040
Outside commission salesmen	50.04.235	FEDERAL GOVERNMENT	
Patient, for Hospital	50.44.040(7)	Benefit arrangements with	50.12.050
Rehabilitation of Handicapped	50.44.040(4)	.....	50.12.180
Religious affiliated	50.44.040(1)	Confidential Information, access to	50.13.020
.....	50.44.040(2)	Contributions erroneously paid to	50.24.030
State and Local Government services	50.44.040(13)	.....	50.12.180
State, some of	50.44.020	Coverage arrangements with	50.04.220
Subcontractors	50.04.145	.....	50.12.060
Tests	50.04.140	Interest	50.04.070
Unemployment Work-Relief	50.44.040(5)	.....	50.04.072
Work-Study	50.44.040(5)	.....	50.16.070
EXCEPTION TESTS		Recovery of benefit overpayments	50.20.190
Control	50.04.140	Repayment of loans from	50.16.030
Independent Business	50.04.140	Replacement of funds of	50.16.060
Place of Business	50.04.140	Unemployment Compensation by, excludes state coverage	50.04.115
EXCLUDED SERVICES (see EXCEPTED SERVICES)		.....	50.04.220
EXEMPT EMPLOYMENT (see EXCEPTED SERVICES)		Unemployment Trust Fund	50.16.020
EXEMPTIONS		.....	50.16.030
Benefits, rights to exempt from collection remedies	50.40.020	.....	50.16.040
Exceptions	50.40.050	.....	50.16.050
Charitable, Religious, Educational Non-Profit Organizations Services performed for	50.44.010	FEDERAL IDENTIFICATION NUMBERS—ISSUING	50.12.045
Distraint, Seizure and Sale, execution exemptions apply	50.24.090	FEDERAL INCOME TAX DEDUCTION AND WITHHOLDING—NOTICE—RULES	50.20.220
Employment (see EXCEPTED SERVICES)		FEDERAL UNEMPLOYMENT TAX ACT— LIABLE TO STATE, IF LIABLE UNDER	50.04.080
Local Governmental and nonprofit agencies hiring enrollees in		FEES	
EXHAUSTEE, DEFINED	50.22.010	Administrative hearings	
Shared Work	50.60.120	Applicant or claimant, no charges for services to	50.32.110
EXPERIENCE RATING (see Experience Rating under EMPLOYER)		Attorney Counsel, agent (limitation on charges for services) ..	50.32.110
EXTENDED BENEFITS		Witnesses	50.32.100
Additional benefit period for rural natural resources impact areas—Eligibility—Training program—Rules	50.22.090	Clerk of Court, no charges for services of	50.32.190
Application of statute and rules—Eligibility for extended benefits	50.22.020	Court Review, attorney	50.32.160
Definitions	50.22.010	From misuse of Confidential Information	50.13.080
Employment security department authorized to pay training benefits—Expenditures	50.22.140	Lien Filing, for	50.24.050
Extended benefit eligibility conditions—		Payable from Administration Fund	50.32.190
Interstate claim	50.22.030	Sheriff's services compensated	50.12.170
Total extended benefit amount—Reduction	50.22.050	FELONY, DISCHARGE FOR	50.20.060
Weekly extended benefit amount	50.22.040	Cancellation of hourly wage credits due to felony or gross misdemeanor	50.20.065
Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment	50.22.060	FILES & RECORDS, DESTRUCTION OF	50.12.140
Supplemental additional benefits—		FILING	
February 26, 1994, through December 31, 1995 —Eligibility	50.22.105	Of,	
Training benefits—Eligibility—Payment—Local work force development council to identify declining and high demand occupations and skill sets—Rules	50.22.150	Benefit Appeals	50.32.020
		when deemed filed & received	50.32.025
		waiver of filing time limitation	50.32.075
		Benefit Applications & Claims	50.20.140
		Liens	50.24.050
		Warrant	50.24.110

FINALITY
 Of,
 Appeal tribunal decision 50.32.040
 50.32.050
 Benefit determination and redetermination 50.32.020
 Commissioner Contribution Agreements 50.24.020
 Commissioner's decision 50.32.090
 Decisions by agreement 50.32.170
 Denial of benefits 50.32.020
 Denial of refund or adjustment (contributions) 50.32.030
 Order and notice of assessment 50.32.030
 Overpayment liability determination 50.20.190
 FINANCING OF BENEFITS (see BENEFITS this index)
 FINES AND PENALTIES 50.16.010
 50.36.010
 50.36.020
 50.36.030
 FOREIGN GOVERNMENT AGREEMENTS 50.12.050
 50.12.060
 FOREIGN GOVERNMENTAL SERVICES
 NOT EMPLOYMENT 50.04.210
 FOREST PRACTICES BOARD—Emergency rules 34.05.090
 FRAUD 50.20.070
 FUNDS
 Administration 50.16.050
 Administrative Contingency (see ADMINISTRATIVE
 CONTINGENCY FUND)
 Federal Interest 50.04.070
 50.04.072
 50.16.010
 50.16.115
 50.16.070
 "Reed Bill" Fund 50.16.010
 50.16.030
 50.16.050
 Replacement of Federal funds 50.16.060
 Unemployment Compensation (see UNEMPLOYMENT
 COMPENSATION FUND)
 G
 GENERAL PUBLIC, ADVISORY
 COUNCIL REPRESENTATIVE 50.12.200
 GOVERNMENT AGENCIES, ACCESS
 TO RECORDS OR INFORMATION 50.13.060
 GOVERNMENT SERVICES NOT EMPLOYMENT 50.04.210
 GOVERNOR:
 Authority to apply for & accept advance 50.12.180
 Collection of Delinquent payments 50.24.125
 Commissioner appointed by 50.08.010
 Commissioner's reports to (see REPORTS)
 Right to delegate Employment Services to Federal agency 50.08.020
 GRATUITIES NO WAGES 50.04.320
 GROSS MISCONDUCT 50.04.294
 Cancellation of hourly wage credits due to 50.20.066
 GROSS MISDEMEANOR, DISCHARGE FOR 50.20.060(2)
 Cancellation of hourly wage credits due to
 felony or gross misdemeanor 50.20.065
 H
 HAIRDRESSERS, SERVICES EXEMPTED 50.04.225
 HANDICAPPED
 Coverage, services excluded from 50.44.040
 Equal opportunities 50.12.210
 Special Attention Services 50.12.210
 HEALTH CARE PROFESSIONALS
 Hepatitis C, who have contracted—Training 50.20.041
 HEARINGS (see APPEALS)
 HORTICULTURAL SERVICES 50.04.150
 HOSPITALS, patients services excluded from coverage 50.44.040
 HUSBAND EMPLOYED BY SPOUSE
 NOT IN EMPLOYMENT 50.04.180
 I
 IMMUNITY 50.12.120

INDIAN TRIBES
 Employment 50.04.265
 50.50.010
 Benefits—Generally 50.50.020
 Contributions—Election of payments in lieu
 of contributions 50.50.030
 Option to make payments in lieu of contributions 50.50.040
 Notices 50.50.050
 Extended benefits—financing by Indian tribe 50.50.060
 Indian tribes subject to same terms and
 conditions as other employers 50.50.070
 Conflict with federal requirements 50.50.900
 Severability 50.50.901
 Effective date 50.50.902
 Retroactive application 50.50.903
 INFORMATION
 Confidential 50.12.010 et seq.
 Refusal to give 50.12.100
 INFORMATION CLEARINGHOUSE
 Assist in employment of persons of disability 50.12.250
 Consultant on establishment 50.12.252
 INITIAL BENEFIT DETERMINATION
 (see Initial determination under BENEFITS)
 INJUNCTIONS
 Delinquent employer, against 50.24.180
 Precluded, against department 50.32.180
 Stay of, by bond 50.24.180
 INMATE WORK PROGRAM 72.09.100
 INSOLVENCY
 Compromise to prevent 50.24.020
 Immediate assessment (jeopardy) in event of 50.24.080
 Lien for contributions in event of 50.24.060
 INSTITUTIONS OF HIGHER EDUCATION
 (see EDUCATION)
 INSURANCE
 Industrial, provided for Youth Service Corp Enrollees 50.48.070
 Medical, provided for Youth Service Corp Enrollees 50.48.040
 INSURANCE AGENTS—Services not employment 50.04.230
 INSURANCE COMPANY—an employer 50.04.080
 INSURANCE PRINCIPLES, BASIS OF ACT 50.01.010
 INTEREST
 Adjustments and refunds 50.16.020
 50.24.150
 Administrative Contingency Fund 50.16.010
 50.24.040
 Assessed interest, use 50.20.195
 Compromise 50.24.020
 Contractors' and principals' liability for 50.24.130
 Delinquent contributions (rate of) 50.24.040
 Federal Interest Payment Fund 50.04.070
 50.04.072
 50.16.010
 50.16.115
 50.16.070
 Limitation of action for collection of 50.24.190
 Limitation on accrual of 50.24.040
 50.24.080
 Stay of interest, by filing petition 50.32.030
 Uncollectible, charged off when 50.24.190
 Waiver of 50.24.040
 INTERESTED PARTIES 50.13.040
 INTERPRETATION OF EMPLOYMENT SECURITY
 ACT, in compliance with Federal Unemployment Tax Act 50.98.110
 INTERSTATE
 Appeals to Thurston County 50.32.140
 Benefit arrangements 50.12.050
 Coverage arrangements 50.12.060
 Employing unit records, use of 50.12.090
 Employment 50.04.110
 50.04.115
 50.04.120
 Eligibility for Extended Benefits 50.22.030
 INVENTORY OF DISTRAINED PROPERTY 50.24.100
 INVESTMENT COMPANY AGENTS—
 SERVICES NOT EMPLOYMENT 50.04.230
 INVESTMENT OF FUNDS 50.16.040

J

JEOPARDY ASSESSMENT	50.24.080
JOB SEARCH MONITORING.....	50.20.240
JOINT ACCOUNTS.....	50.24.170
JOINT-STOCK COMPANY—AN EMPLOYER	50.04.080
JUDGMENT OF COURT	50.32.150
JUDICIAL REVIEW	
Costs, charges & expenses to Commissioner.....	50.23.190
Claimant, no bond needed.....	50.32.130
Employer, limitation on power to stay	
commissioners decisions.....	50.32.130
Interstate Petitions, venue in Thurston County.....	50.32.140
Jurisdiction of the Courts.....	50.32.150
Procedure.....	50.32.120
Remedies of the title exclusive.....	50.32.180
JURISDICTION OF COURT.....	50.32.140
.....	50.32.150
JURY DUTY	
Compensation not wages.....	50.20.117
Non disqualification of benefits.....	50.20.117
Remuneration for purpose of deduction from benefits.....	50.20.117

L

LABOR	
Disputes.....	50.20.090
LABOR EXCHANGE SYSTEM	
Electronic.....	50.20.230
LABOR MARKET INFORMATION AND	
ECONOMIC ANALYSIS	
Annual report.....	50.38.040
Conflict with federal requirements.....	50.38.901
Definitions	50.38.015
Department as state entity for occupational information,	
state occupational forecast criteria.....	50.38.020
Department, duties.....	50.38.050
Department, powers.....	50.38.060
Effective date, 1982.....	50.38.900
Effective date, 1993.....	50.38.902
Intent.....	50.38.010
Moneys received for nonfunded labor	
market information costs, disposition.....	50.38.065
State occupational forecast, consultant	
with other agencies	50.38.030
LANGUAGE (see RESPECTFUL LANGUAGE)	
LEGAL COUNSEL FOR DEPARTMENT.....	50.12.150
LEGAL REPRESENTATIVE OF DECEDENT, an employer.....	50.04.080
LEGISLATURE, RIGHT TO AMEND OR REPEAL TITLE.....	50.40.040
LEGISLATIVE INTENT	50.01.010
LIABILITY	
Administration Fund, for costs and fees	50.32.100
.....	50.32.160
.....	50.32.190
Benefit claimant, for overpayment.....	50.20.190
Contractor for contributions and interest	50.24.130
Employer,	
Contributions	50.24.010
Interest.....	50.24.040
State, nonliability for benefits	50.20.150
State, to replace Federal funds	50.16.060
Subcontractor for contributions and interest.....	50.24.130
LIBERAL CONSTRUCTION OF ACT	50.01.010
LIEN FOR CONTRIBUTIONS (see also COLLECTIONS)	
Dissolution of assets, in event of.....	50.24.060
Filing of.....	50.24.050
Generally	50.24.050
Insolvency, in event of.....	50.24.060
Priority	50.24.050
.....	50.24.060
Release of	50.24.050
LIMITATION OF ACTIONS	50.24.190
LIMITATIONS ON ATTORNEYS FEES.....	50.32.110
LOCAL GOVERNMENTAL SERVICES,	
ELECTION OF COVERAGE	50.24.160
.....	50.44.030
LOCALIZED SERVICE DEFINED	50.04.120

M

MAILED APPEALS & PETITIONS,	
when deemed filed & received	50.32.025
MANDATORY COVERAGE OF EMPLOYEES	50.44.090
MARITAL COMMUNITY, SERVICES	
NOT EMPLOYMENT.....	50.04.180
MARITIME SERVICE EMPLOYMENT	50.04.170
MERIT RATING OF EMPLOYERS	
(see EXPERIENCE RATING)	
MINIMUM WAGE—COMPUTING HOURS	50.12.070
MINOR EMPLOYED BY PARENT NOT IN EMPLOYMENT	50.04.180
MISCONDUCT.....	50.04.293
Discharge for.....	50.20.060
MISCONDUCT—GROSS MISCONDUCT	50.04.294
MISDEMEANORS	50.36.010
By employing units or agents thereof.....	50.36.030
Discharge for Gross Misdemeanor	50.20.060(2)
MISREPRESENTATION:	
Disqualification for benefits	50.20.070
Penalties for.....	50.36.010
.....	50.36.020
MULTI-STATE SERVICES.....	50.12.060

N

NEWSBOYS NOT IN EMPLOYMENT.....	50.04.240
NONPROFIT ORGANIZATIONS	
Benefits payable for employment.....	50.44.050
Election to make payments in lieu of contributions	50.04.060
Exclusions from coverage.....	50.44.040
Financing Benefits paid employees of.....	50.04.060
Previously uncovered services, effect of.....	50.98.100
Religious, Charitable, educational	50.44.010 et seq.
NOTICES	
Of,	
Appeals (see APPEALS)	
Appeal tribunal decision.....	50.32.040
.....	50.32.050
Appearance of commissioner.....	50.32.120
Assessment and order	50.24.070
Appeal from	50.32.030
Benefit charges	50.29.070
Denial or allowance of benefits.....	50.20.180
Denial of refund.....	50.24.150
Determination of liability for overpayment	50.20.190
Distrain, seizure and sale.....	50.24.100
Initial determination of benefits payable	50.20.140
.....	50.20.150
Postadoption	34.05.362
Redetermination of benefits to correct error	50.20.160
Service of process of collection by civil action	50.24.120
Tax Rate.....	50.29.070
Relating to payment in lieu of contribution	
(see PAYMENT IN LIEU OF CONTRIBUTIONS)	
To,	
Base year employer	50.20.150
Withhold & deliver property	50.24.110
NOTICE, INSTRUCTIONS, ETC.	
AVAILABLE TO EMPLOYEE.....	50.20.140

O

OATHS & AFFIRMATIONS.....	50.12.130
OCCUPATIONAL INFORMATION SERVICE—	
FORECAST (former title - see Labor Market . .)	
Annual report	50.38.040
Conflict with federal requirements	50.38.901
Definitions	50.38.015
Department as state entity for occupational information,	
state occupational forecast criteria	50.38.020
Department, duties	50.38.050
Department, powers	50.38.060
Effective date, 1982	50.38.900
Effective date, 1993	50.38.902
Intent	50.38.010
Moneys received for nonfunded labor	
market information costs, disposition	50.38.065

State occupational forecast, consultant with other agencies	50.38.030	Money deposit:	
OFFICE OF ADMINISTRATIVE HEARINGS		Deposit of money required	50.44.070
(see also APPEALS TRIBUNAL)		Amount of deposit	50.44.070(1)
Accounting Procedures	34.12.150	Escrow account for deposits.....	50.44.070(3)
Administrative Law Judge		Sale of securities.....	50.44.070(3)
Appointment	34.12.030	Review of adequacy of deposit	50.44.070(3)
Appointment of the Chief Administrative Law Judge	34.12.120	Deduction from deposit.....	50.44.070(3)
For State Patrol disciplinary hearings.....	34.12.035	Requirement to deposit additional money	50.44.070(3)
Hearings conducted by.....	34.12.040	Failure to make a deposit	50.44.070(4)
Motion of prejudice against	34.12.050	Failure to increase a deposit	50.44.070(4)
Request for assignment.....	34.12.050	Securities deposit:	
Application of chapter	34.12.110	Deposit of securities required	50.44.070
Definition.....	34.12.020	Escrow account for securities.....	50.44.070(3)
Direct Payments by Agencies	34.12.160	Requirement to deposit additional securities	50.44.070(3)
Establishment	34.12.010	Disposition of income from securities	50.44.070(3)
Exclusion	34.12.042	Extension of the filing, deposit or adjustment period	50.44.070(4)
Local government whistleblower		Termination of election and duration because	
proceedings	34.12.038	of inadequate deposit	50.44.070(4)
proceedings, cost.....	34.12.039	General:	
Record of Hearings.....	34.12.070	Deduction from remuneration unlawful.....	50.44.060(2)(d)
Revolving Fund	34.12.130	Meaning of.....	50.04.295
.....	34.12.140	.....	50.44.060(1)
Rules	34.12.080	Payments are taxes	50.04.072
Salaries.....	34.12.100	Payments included in term "contributions"	50.04.073
OPEN GOVERNMENT ACT	50.13.010	Payment required when more than	
ORDER & NOTICE		one base year employer.....	50.44.060(3)
Of,		Rules and regulations	50.44.060(1)(e)
Assessment.....	50.24.070	Meaning of	50.04.072
Appeal from	50.32.030	Nonprofit organizations:	
Judgement on	50.32.156	Election:	
To,		Notice of election	50.44.060(1)(a)
Withhold & deliver property	50.24.110	Subject 1/1/72-duration of election	50.44.060(1)(a)
ORDER TO PRODUCE RECORDS	50.12.100	Subject after 1/1/72-duration of election.....	50.44.060(1)(b)
ORDER TO WITHHOLD AND DELIVER	50.24.110	Notice terminating election.....	50.44.060(1)(b)
OUTSIDE COMMISSION SALESMEN	50.04.235	Notice of election to change from tax basis to	
OVERPAYMENT OF BENEFITS:		reimbursable basis and duration of such election.....	50.44.060(1)(c)
Assessed interest, use	50.20.195	Extending filing period for notice of election and	
Compromise of.....	50.24.020	notice of termination	50.44.060(1)(d)
Interest Penalty, use of	50.20.190(6)	Payments by	50.44.010
Judgment.....	50.20.190	.....	50.44.060(1)
Recovery of	50.20.190	Political subdivisions:	
OYSTERS—SERVICES IN CONNECTION WITH.....	50.04.150	Payments by.....	50.44.030
		Payments required on termination of coverage.....	50.44.030
		Collection by Governor.....	50.24.125
		Local Government Taxes, for those not elected to make.....	50.44.035
		Pool Accounts, for payment of.....	50.44.030
		Recovery by civil action.....	50.24.125
		Review and appeal:	
		Request for review and redetermination	50.44.060(1)(e)
		Denials of review and redetermination	50.44.060(1)(e)
		Petition for hearing	50.44.060(1)(e)
		State, payments by	50.44.020
		PENAL INSTITUTIONS, custodial services	
		of inmates excluded from coverage	50.44.040
		PENALTIES (For claimant penalties,	
		see DISQUALIFICATIONS)	
		Assessment of	50.12.220
		For,	
		Compromise, involvement in	50.36.010
		Concealment of Property.....	50.36.010
		Discharge, concealing cause of	50.36.030
		Employer violations	50.36.020
		Failure to file reports in timely fashion.....	50.12.220
		Failure to obey court order	50.12.100
		Failure to pay contributions on due date	50.12.220
		False Information, Giving of.....	50.36.010
		Misuse of Confidential Information.....	50.12.080
		Violations of act	50.36.010
		.....	50.36.020
		.....	50.36.030
		Surety liability	50.44.070
		PENSIONS	50.04.323
		PERJURY SUBJECT TO, THOUGH	
		COMPELLED TO TESTIFY	50.12.120
		PERSONAL SERVICES CONSTITUTE EMPLOYMENT	50.04.100
		PERSONNEL	50.12.020
		PETITION	
		Filing of stays accrual of interest.....	50.32.030

For commissioner's review 50.32.070
 For hearing, appeal tribunal (assessment) 50.32.030
 Mailed, when deemed filed & received 50.32.025
 PLEDGE OR ASSIGNMENT OF BENEFITS VOID 50.40.010
 50.40.020
 POLICE POWER, ACT ENACTED UNDER 50.01.010
 POLICY OF ACT 50.01.010
 POLITICAL SUBDIVISIONS
 Election of Coverage 50.24.160
 50.44.030
 Exemptions 50.44.040
 Financing of Benefits 50.44.030
 Local Government Taxes, for those not electing to make
 payments in lieu of contributions 50.44.035
 Account in Unemployment Compensation Fund 50.44.035
 Self sustaining 50.44.035
 Pool Accounts 50.44.030
 Port District (special provision) 50.44.030
 Services not employment 50.04.210
 POOL ACCOUNTS 50.44.030
 Administration of 50.44.030
 Definition of 50.44.030
 Local Government Tax 50.44.035
 POSTADOPTION NOTICE 34.05.362
 POSTING OF REGULATIONS BY EMPLOYERS 50.20.140
 PREAMBLE 50.01.010
 PRECEDENTIAL DECISIONS BY COMMISSIONER 50.32.095
 PREDECESSOR, Employer Contribution rates 50.29.062
 PRESCHOOL (NON GOVERNMENTAL),
 Services excluded from coverage 50.44.040
 PRINCIPAL'S AND CONTRACTOR'S LIABILITY
 FOR CONTRIBUTIONS AND INTEREST 50.24.130
 PRIORITIES 50.24.050
 50.24.060
 PRIVACY, Records & Information 50.13.010 et seq.
 PROBATE PROCEEDINGS, LIEN IN EVENT OF 50.24.060
 PROCEDURES ON APPEAL (see APPEAL)
 PROFILING 50.20.011
 PRORATING BENEFIT CHARGES, WAGES
 DEFINITION 50.29.030
 PROSECUTIONS OF CIVIL AND CRIMINAL
 ACTIONS (see ACTIONS)
 PROTECTION AGAINST SELF-INCRIMINATION 50.12.120
 PUBLICATION FOR DISTRIBUTION
 Act, Employment Security 50.12.160
 Reports of commissioner 50.12.160
 Rules and regulations 50.12.160
 PUBLICATION AND POSTING OF NOTICES
 Distraint and sale 50.24.090
 Extended benefit period becoming effective 50.22.060
 Rules 50.12.040
 PUBLIC EMPLOYMENT OFFICE, established
 & maintained 50.12.180
 PURPOSE OF ACT 50.01.010

Q

QUALIFICATION DATE 50.29.010
 QUALIFIED EMPLOYER 50.29.010
 QUALIFYING WAGES FOR ELIGIBILITY 50.20.010
 50.04.355
 QUARTER (CALENDAR) DEFINED 50.04.050
 QUITTING WORK VOLUNTARILY 50.20.050

R

RAILROAD RETIREMENT BOARD,
 COOPERATION WITH 50.12.180
 RATE YEAR 50.29.010
 RATES (see COMPUTATION OF)
 REAL ESTATE BROKERS AND SALESMEN—
 SERVICES NOT EMPLOYMENT 50.04.230
 REASONABLE ASSURANCE 50.44.053
 RECEIVER—AN EMPLOYER 50.04.080
 RECEIVERSHIP— LIEN IN EVENT OF 50.24.060
 RECIPROCAL BENEFIT ARRANGEMENTS 50.12.050
 RECIPROCAL COVERAGE ARRANGEMENTS 50.12.060
 Acquiescence by individual in employment 50.12.060

RECORDS

Compulsory Production of 50.12.100
 Construction and interpretation 50.13.900
 Decisions of Appeal Tribunal, when confidential 50.13.050
 Destruction of 50.12.140
 Interpretation of, Commissioner's authority 50.13.030
 Information held private and
 Confidential - Request for Disclosure 50.13.015
 Interstate Use of 50.12.090
 Legislative Intent 50.13.010
 Unified Business Identifier Account Number 50.12.070
 Of,
 Administrative proceedings, certified 50.32.120
 Appeal hearings 50.32.060
 Claim for contributions, compromise 50.24.020
 Employing Unit 50.12.070
 Governmental agencies 50.13.060
 Unemployment Compensation Fund 50.16.030(6)
 Privacy & Confidentiality, availability to
 judicial or administrative proceedings 50.13.070
 Recognition of Need for 50.13.010
 Release allowed to 50.13.010
 Appeal Tribunal, materially related information 50.13.050
 Consenting affected parties 50.13.100
 Discovery proceedings, administrative or judicial 50.13.070
 Federal Government 50.13.020
 Government Agencies
 Access to 50.13.060
 Exemptions to non-release
 Criminal Investigation 50.13.060
 Emergencies 50.13.060
 State Legislature, for official purpose 50.13.060
 Limited use of released information 50.13.060
 Restrictions on release 50.13.060
 Identifying details deleted, when 50.16.100
 Interested parties 50.13.040
 Private Contracting parties (restriction & penalties) 50.13.080
 When required under terms of contract with the
 Employment Security Department 50.13.090
 Self-incrimination 50.12.120
 Severability 50.13.905
 Shared work employer 50.60.030(10)
 Subpoenas for disclosure (language & service) 50.13.070
 RECOVERY OF
 Benefit payments (overpayments) 50.20.190
 Contributions paid to another state or to
 United States Government 50.24.030
 REDETERMINATION
 Appeal from 50.32.020
 Of,
 Benefits Payable 50.20.160
 Benefits to correct error 50.20.160
 Denial of benefits 50.20.160
 Employers Contribution Rate 50.29.080
 Initial Determination (Benefits) 50.20.160
 Notice of (see NOTICES)
 REDUCTION OF BENEFIT AMOUNT 50.20.130
 "REED BILL" FUND AND APPROPRIATION 50.16.010
 50.16.030
 50.16.050
 REFUNDS 50.24.150
 REFUSAL
 To,
 Give information 50.12.100
 50.36.010
 50.36.020
 Obey subpoena 50.12.100
 50.36.010
 50.36.020
 Submit reports 50.12.080
 50.36.010
 50.36.020
 Work, (accept or apply for suitable) 50.20.080
 50.20.110
 50.20.043
 REGISTRATION FOR WORK 50.20.010
 REGULATIONS
 Adoption, amendment and rescission of 50.12.040

Continued 50.98.020
 Employer to post..... 50.20.140
 Publication (distribution) of..... 50.12.160
REGULATORY FAIRNESS ACT
 Agency adoption of rules 19.85.030
 Agency plan for review of business 19.85.050
 Definitions 19.85.020
 Federal law - compliance 19.85.061
 Finding..... 19.85.011
 Limited..... 19.85.025
 Severability 19.85.900
 Small business economic impact statement
 Notice of proposed rule..... 19.85.070
 Purpose..... 19.85.040
 When not required..... 19.85.060
REIMBURSEMENT PAYMENTS
 (see PAYMENTS IN LIEU OF CONTRIBUTIONS)
RELIGIOUS, Nonprofit Organizations..... 50.44.010
 Coverage, excluded from 50.44.040
REMEDIES CUMULATIVE..... 50.24.140
REMEDIES EXCLUSIVE..... 50.32.180
REMUNERATION DEFINED 50.04.320
 50.04.323
REPAYMENT OF FEDERAL LOANS 50.16.030
REPLACEMENT OF FEDERAL FUNDS 50.16.060
REPORTS
 Commissioner:
 Annual report to Governor..... 50.12.010
 Arbitrary Reports, right to make..... 50.12.080
 Duty to compute..... 50.12.070
 Verification by, to Social Security Board..... 50.12.180
 Department:
 Annual report and benefit history on the unemployed..... 50.62.040
 Employer:
 Arbitrary, by commissioner..... 50.12.080
 Employing unit..... 50.12.070
 Erroneously filed..... 50.24.030
 Failure to make 50.36.020
 50.12.070
 Failure to file in timely fashion 50.12.220
 Publication of 50.12.160
 Redetermination..... 50.12.070
REPRESENTATION IN COURT..... 50.12.150
RESPECTFUL LANGUAGE..... 34.05.100
RETIREMENT AND DISABILITY PAYMENTS,
 NOT WAGES..... 50.04.330
RETIREMENT PAYMENTS, DEDUCTION 50.04.323
REVIEW
 Commissioner, by
 Finality of..... 50.32.090
 Petition for 50.32.070
 Precedential Decisions..... 50.32.095
 Procedure for..... 50.32.080
 Court, by 50.32.120
 50.32.150
RIGHTS TO BENEFITS
 Assignment of Void..... 50.40.020
 Waiver of Void..... 50.40.010
RULES
 Appeal..... 34.05.330
 Continued 50.98.020
 Distribution of, to public 50.12.160
 Electronic distribution 34.05.260
 Expedited adoption..... 34.05.230
 Feasibility studies - pilot projects 34.05.313
 Prenotice inquiry 34.05.310
 Pilot projects - feasibility studies 34.05.313
 Public participation..... 34.05.325
 Publication of by commissioner 50.12.040
 Review of existing rules 34.05.630
 Rule-making authority..... 50.12.040
 Rule-making authority - Scope 34.05.322
 Rules development agenda..... 34.05.314
 Significant legislative 34.05.328

S

SALARIES OF PERSONNEL 50.12.020

..... 50.12.150
SALE, DISTRAINT AND SEIZURE
 (See DISTRAINT, SEIZURE AND SALE)..... 50.24.090
SALESMEN-SERVICES NOT EMPLOYMENT 50.04.230
 50.04.235
SAVING CLAUSE 50.98.010
SCHOOL ATTENDANCE, disqualification from benefits
 (see also EDUCATION)..... 50.20.095
SEAL OF COMMISSIONER 50.12.010
SEAMAN (see MARITIME SERVICE)
SECRETARY OF LABOR
 Administrator of Unemployment Compensation Fund 50.16.050
 Defines proper administration 50.16.060
SECRETARY OF STATE
 Filing of Liens with..... 50.24.050
 Service upon 50.24.120
SEIZURE, SALE AND DISTRAINT
 (see DISTRAINT, SEIZURE AND SALE) 50.24.090
SELF-INCRIMINATION 50.12.120
SEPARABILITY OF PROVISIONS..... 50.98.070
SERVICE OF
 Notice of Assessment 50.24.070
 Notice & order of withholding & deliverance..... 50.24.070
 Process for Collection by civil action..... 50.24.120
SERVICE ON SECRETARY OF STATE 50.24.120
SERVICES
 Employee leasing agency..... 50.04.245
 Employment, determined by 50.04.100
 Localized 50.04.110
 50.04.120
 Multi-state..... 50.04.110
 50.04.120
 Out-of-state 50.04.115
 Exception tests 50.04.140
 Exemptions (see EXCEPTED SERVICES)
 Performed by Musicians or Entertainers 50.04.148
 Reciprocal benefit arrangements 50.12.050
 Reciprocal coverage arrangements 50.12.060
 Referral agency 50.04.245
 Situs of 50.04.110
 Temporary services agency 50.04.245
 Travel 50.04.232
SEVERABILITY OF PROVISIONS..... 50.98.070
SHARED WORK COMPENSATION PLANS
 Benefits:
 Charge to employer's experience rating accounts 50.60.110
 Claims 50.60.100
 Conditions of entitlement 50.60.100
 Eligibility 50.60.090
 Exhaustee 50.60.120
 Maximum..... 50.60.100
 Weekly Amount 50.60.100
 Claims:
 Criteria for approval 50.60.030
 50.60.040
 Effective date..... 50.60.060
 50.60.060
 Expiration 50.60.060
 Misrepresentation 50.60.050
 Modification 50.60.080
 Penalties..... 50.60.050
 Rejection..... 50.60.040
 Resubmission..... 50.60.040
 Review of plan..... 50.60.070
 Revocation..... 50.60.070
 Conflict with federal requirements 50.60.900
 Definitions 50.60.020
 Legislative intent..... 50.60.010
 Rules 50.60.900
 50.60.901
 Title 50.60.900
SHERIFF
 Fees of 50.12.170
 No bond required by 50.12.170
 Services for commissioner 50.12.170
SOCIAL SECURITY BOARD
 Cooperation with..... 50.12.180
 Reports by commissioner to 50.12.180

SOLVENCY OF FUND		SUPPLEMENTAL ADDITIONAL BENEFITS	50.22.105
Loan from Federal funds	50.12.180	SURETY BOND, deposit of money or securities	
.....	50.16.010	(see PAYMENTS IN LIEU OF CONTRIBUTIONS)	
.....	50.16.030		
Nonliability of state-insolvency	50.20.200	T	
SOLVENCY SURCHARGE		TAXABLE WAGE BASE	
Contribution rate	50.29.041	Payment of contributions—Amount of wages subject to tax... ..	50.24.010
SPECIAL COVERAGE PROVISIONS	50.44.010 et seq.	TAXES (see also CONTRIBUTIONS)	
Construction		Local Government, for financing of payments.....	50.44.035
Compliance with FUTA.....	50.44.080	Computation of (see COMPUTATION OF)	
Mandatory coverage of employees of		Not Wages (nondeductible)	50.04.350
political subdivisions provisions.....	50.44.090	TEACHERS, NOT ELIGIBLE BETWEEN TERMS	50.44.050
Exclusions from Coverage	50.44.040	TECHNICAL ASSISTANCE DOCUMENTS	43.05.010(4)
Institutions of Higher Education		TECHNICAL ASSISTANCE PROGRAMS	
Defined.....	50.44.037	Agency immunity—Enforcement authority	43.05.150
Terms & Conditions of payable benefits.....	50.44.050	Agency programs—List of technical assistance providers	43.05.020
Nonprofit Organizations	50.44.010	Application of RCW 43.05.060 and 43.05.070—Limited	43.05.080
Election to make payments in lieu of contributions	50.44.060	Conflict with federal requirements	43.05.901
Surety bond, deposit, or securities		Definitions.....	43.05.010
necessary (see Payment in Lieu of		Department of agriculture, fish and wildlife, health,	
Contribution, subtitle Deposits).....	50.44.070	licensing, natural resources—Notice of correction.....	43.05.100
Payments in lieu of Contributions (see		Department of agriculture, fish and wildlife, health,	
PAYMENTS IN LIEU OF CONTRIBUTIONS)		licensing, natural resources—Penalty	43.05.110
Political Subdivisions	50.44.030	Department of ecology—Notice of correction	43.05.060
Financing benefits	50.44.090	Department of ecology—Penalty.....	43.05.070
Local Government Tax.....	50.44.035	Department of labor and industries—Consultative	
Mandatory coverage of employees		visit, report—Compliance inspection, citation	43.05.090
Construction of	50.44.090	Educational programs	43.05.130
Pool Accounts.....	50.44.030	Findings.....	43.05.005
State.....	50.44.020	Findings—Short title—Intent—1995 c 403	43.05.905
SPECIAL EMPLOYMENT ASSISTANCE		Issuance of penalty during technical assistance visit	43.05.050
Legislative Findings	50.62.010	Part headings not law—1995 c 403	43.05.903
Definitions	50.62.020	Pilot voluntary audit program	43.05.140
Job Service Programs and Activities.....	50.62.030	Report to the governor and legislature—	
SPOUSE, SERVICES OF, NOT EMPLOYMENT	50.04.180	Expiration of section	43.05.900
STABILIZATION OF EMPLOYMENT	50.12.190	Resolution of conflict with federal requirements—	
STALKING		Notification.....	43.05.902
Leaving work.....	50.20.050(2)	Severability—1995 c 403	43.05.904
Separation, because of.....	50.20.050(2)	Technical assistance visit—Notice of violation	43.05.030
STATE:		Time for compliance—Extension	43.05.120
Coverage.....	50.44.020	Time to correct violations—Revisit—Issuance of penalties... ..	43.05.040
Defined	50.04.300	TEMPORARY LABOR	50.04.270
Election of coverage	50.24.160	TEMPORARY SERVICES AGENCY.....	50.04.245
Exemptions	50.44.040	TEMPORARY TOTAL DISABILITY (see DISABILITY)	
Federal cooperation	50.12.180	TESTIMONY	
Commissioner, authority to enter into agreement	50.12.180	Additional evidence ordered taken, by commissioner	50.32.080
Governor, authority of	50.12.180	Self-incrimination	50.12.120
Federal funds replaceable by.....	50.16.060	THURSTON COUNTY, interstate petitions to	50.32.140
Individuals in employment of, excluded.....	50.04.210	TRADE READJUSTMENT ALLOWANCE	
Law relating to moneys of, not applicable	50.16.030	Not eligible to receive benefits	50.22.050(2)
.....	50.16.050	TRAINING	50.20.043
Nonliability of, for benefits.....	50.20.200	Commissioner approved	50.20.043
Payments in lieu of contributions.....	50.44.020	Establish Rules for Noncharging	
Reciprocal benefit arrangements	50.12.050	Relief for On-The-Job Training	50.12.240
Reciprocal coverage arrangements	50.12.060	Failure to attend	50.20.044
STATE ADVISORY COUNCIL	50.12.200	Unemployed aerospace workers	50.20.042
Expenses of.....	50.12.200	TRAINING BENEFITS	
STATUTE OF LIMITATIONS.....	50.24.190	ESD authorized to pay training benefits—Expenditures	50.22.140
STUDENT, SERVICES OF, NOT EMPLOYMENT	50.44.040	Eligibility—Payment—Local work force development	
SUBCONTRACTOR:		council to identify declining and high demand	
Exemption.....	50.04.145	occupations and skill sets—Rules	50.22.150
Guarantee to principal for contributions	50.24.130	Eligibility to work in the United States	50.20.099
When an employer.....	50.04.100	Intent	50.22.130
When in employment	50.04.100	TRAVEL SERVICES	50.04.232
SUBPOENA		TREASURER	
Commissioner or representative authorized to issue	50.12.130	Bond of.....	50.16.020
Compliance with (issued by commissioner or representative).....	50.12.120	.....	50.16.050
Failure to comply with, a crime	50.12.130	Custodian of Administrative Contingency Fund	
.....	50.36.010	and Unemployment Compensation Fund.....	50.16.020
Self-incrimination, no excuse.....	50.12.120	Designated by commissioner	50.16.020
SUCCESSOR, EMPLOYER CONTRIBUTION RATES	50.29.062	Unemployment Trust Fund moneys handled by	50.16.040
SUITABLE WORK		.....	50.16.050
Defined	50.20.100	Warrants issued by.....	50.16.020
Determination of, factors considered	50.20.100	.....	50.16.030
Exceptions	50.20.110	TRUST FUND	
Refusal of.....	50.20.110	Account in Unemployment Comp. Fund.....	50.16.020
While in Approved Training.....	50.20.118	Discontinuance of.....	50.16.040
SUPERVISORS OF DIVISIONS.....	50.08.020		

Withdrawals from 50.16.030
 TRUST ORGANIZATION, AN EMPLOYER 50.04.080
 TRUSTEE, AN EMPLOYER 50.04.080

U

UNCOLLECTIBLE ACCOUNTS 50.24.200
 UNEMPLOYED INDIVIDUALS 50.04.310
 50.20.010
 Partial 50.04.310
 Total 50.04.310
 UNEMPLOYMENT COMPENSATION
 ADMINISTRATIVE FUND
 Administrator guidelines 50.16.050
 Administrator, Secretary of Labor 50.16.050
 Costs of,
 Appellate procedures taken from 50.32.100
 Commissioner’s services in appellate
 procedure taken from 50.32.190
 Disbursement by Treasurer of 50.16.050
 Established 50.16.050
 Federal Funds, replacement for misuse of 50.16.060
 Limitation on use of 50.16.050
 Purpose of 50.16.050
 Source/composition of 50.16.050
 UNEMPLOYMENT COMPENSATION
 DIVISION ESTABLISHED 50.08.020
 UNEMPLOYMENT COMPENSATION FUND
 Accounts of,
 Benefit 50.16.020
 Clearing 50.16.020
 Local government tax 50.44.035
 Unemployment Trust Fund 50.16.020
 Administration Fund 50.16.050
 Administration of 50.16.020
 Advances to, from Federal funds 50.12.180
 Contributions erroneously paid to another 50.24.030
 Deposits 50.16.020
 Established 50.16.010
 Federal fund, replacement for misuse of 50.16.060
 Investment of 50.16.040
 Maintenance of 50.16.010
 Refunds 50.16.020
 Requisitioning, “Reed Bill” funds 50.16.050
 Salaries, paid out of 50.12.150
 Solvency of, repayment of loans for 50.16.030
 Sources/composition of 50.16.010
 50.24.010
 50.29.010
 50.44.010
 State funds, law relating to not applicable 50.16.050
 Surplus, definition 50.29.010
 UNEMPLOYMENT DUE TO VACATION 50.20.115
 UNEMPLOYMENT - PARTIAL, PART TIME 50.04.310
 50.20.130
 UNEMPLOYMENT COMPENSATION TRUST FUND
 Administration of 50.16.030
 Deposit in 50.16.020
 Discontinuance, management of funds on 50.16.040
 Limitations on requisitions 50.16.030
 Records of 50.16.030
 Source of
 Distrain, seizure, & sale 50.24.100
 Withdrawals from 50.16.030
 UNEMPLOYMENT WORK-RELIEF, services
 excluded from coverage 50.44.040
 UNIFIED BUSINESS IDENTIFIER RECORDS 50.12.070
 UNITED STATES GOVERNMENT
 Contributions erroneously paid to 50.24.030
 Cooperation with 50.12.180

V

VACATION, UNEMPLOYMENT DUE TO 50.20.115
 VENDORS IN GOOD STANDING 50.40.065
 50.40.066
 VENUE, FOR INTEREST PETITIONS APPEALING
 COMMISSIONER’S DECISION 50.32.140

VESSELS 50.04.170
 VESTED RIGHTS, NONE AGAINST LEGISLATURES
 AMENDMENTS OR REPEALS 50.40.040
 VIOLATIONS OF ACT, PENALTIES FOR 50.36.010
 50.36.020
 50.36.030
 VOCATIONAL TRAINING 50.12.190
 VOCATIONAL TRAINING, COMMISSIONER
 APPROVED 50.20.043
 VOLUNTARY ELECTION OF COVERAGE 50.04.115
 50.24.160
 50.44.030
 VOLUNTARY QUIT 50.20.050

W

WAGE BASE
 Subject to tax 50.24.010
 WAGE CREDITS
 Combination of 50.12.050
 Defined 50.04.320
 WAGE REQUIREMENTS 50.20.010
 50.20.120
 WAGES
 Accrued compensation 50.04.320
 Benefit eligibility requirements 50.20.010
 50.20.120
 Bonuses as 50.04.320
 Commissions as 50.04.320
 Constructively paid 50.24.015
 Defined 50.04.320
 for purposes of prorating benefit charges 50.29.030
 Dismissal payments, as 50.04.350
 Exclusions from,
 Death benefits 50.04.340
 Disability payments 50.04.330
 50.04.350
 Military service payments 50.04.350
 As paid 50.04.320
 Retirement payments 50.04.330
 Taxes (nondeductible) on employment 50.04.350
 Maximum taxable 50.24.010
 Remuneration included as 50.04.320
 50.04.323
 50.04.330
 50.04.335
 50.04.340
 50.04.350
 50.04.355
 Subject to tax 50.24.010
 WAITING PERIOD (see Waiting period under BENEFITS)
 WAIVER
 Of,
 Benefit rights void 50.40.010
 Collection of Benefit overpayments 50.20.190
 Exemption void 50.40.020
 Interest 50.24.040
 Penalties 50.12.220
 WARRANT, for enforcement of notice of assessment 50.24.115
 WARRANTS ISSUED BY TREASURER 50.16.020
 WASHINGTON SERVICE CORPS
 Authority for income-generating projects 50.65.090
 Commissioner’s duties 50.65.030
 Commissioner to seek assistance for youth
 employment exchange 50.65.080
 Conflict with federal requirements 50.65.901
 50.65.903
 50.65.906
 Criteria for enrollment 50.65.040
 Definitions 50.65.020
 Disposition of income 50.65.090
 Effective date 50.65.905
 Enrollees not to displace current workers 50.65.070
 Exemption or enrollees for unemployment
 compensation coverage 50.65.120
 Funds and grants (Federal and Private) 50.65.130
 Legislative findings 50.65.010

Limitation on use of funds for administration—
 Service corps 50.65.143
 List of local youth employment opportunities 50.65.050
 Medical insurance and medical aid 50.65.110
 Minimum wage or subsistence allowance 50.65.110
 Placement under work agreements 50.65.060
 Scholarship account 50.65.150
 Severability 50.65.904
 50.65.908
 Short title 50.65.907
 Use of funds for enrollees and projects
 in distressed areas—Service corps 50.65.138
 Washington Serves
 Applicant, eligibility 50.65.230
 Definitions 50.65.210
 Displacement of current workers prohibited 50.65.280
 Disqualification for Washington service
 corps participation 50.65.240
 Findings, declaration 50.65.200
 Gifts, grants, endowments, matching fund 50.65.330
 Program, created, procedures, intent 50.65.220
 Service placement, work agreements, contracts, rules
 for agencies, financial support for organizations 50.65.320
 Volunteers
 Selection, placement 50.65.250
 Support 50.65.260
 Medical benefits, benefit limits 50.65.230
 Unemployment compensation coverage limitation 50.65.290
 Assistance to defer student loan payments 50.65.300
 Subsequent development of skills
 and experience, recognition 50.65.310
 Work agreements
 Nondiscrimination 50.65.100
 Requirements 50.65.065
 Youth employment exchange 50.65.030
 WASHINGTON STATE EMPLOYMENT
 SERVICE DIVISION 50.08.020
 WEEK DEFINED 50.04.360
 WEEKLY BENEFIT AMOUNT 50.20.120
 Deduction from 50.20.130
 Rounding calculation 50.04.323
 WIFE EMPLOYED BY SPOUSE NOT EMPLOYMENT 50.04.180
 WITHDRAWALS OF FUNDS 50.16.030
 Obligation “Reed Bill” funds 50.16.030
 Appropriation, “Reed Bill” funds 50.16.030
 WITHHOLD, property of delinquent employer
 (see also DELIVER)
 Authorization to 50.24.110
 Penalty for non-deliverance 50.24.110
 Procedure 50.24.110

WITNESSES
 Compulsory attendance of 50.12.130
 False statements by, a crime 50.36.010
 50.36.020
 Fees (administrative hearing) 50.32.100
 Oaths and affirmations by commissioner or
 representative 50.12.130
 Self-incrimination, protection against 50.12.120
 Subpoena by commissioner or representative 50.12.130
 Penalties for failure to comply with 50.36.010
 WORK, REFUSAL OF 50.20.080
 Obtaining other work 50.20.080
 While in training 50.20.043
 WORK, SUITABLE (see also SUITABLE WORK) 50.20.100
 Exceptions 50.20.110
 While in Approved Training 50.20.118

Y

YEAR, BASE 50.04.020
 50.20.010
 YEAR, BENEFIT 50.04.030
 YOUTHBUILD PROGRAM
 Commissioner's duties—Education and
 employment training grants 50.72.030
 Definitions 50.72.020
 Education and employment training grants—
 Eligible activities 50.72.040
 Grant applicants—Information required—
 Evaluation reports 50.72.070
 Grant applications—Requirements 50.72.060
 Legislative findings 50.72.010
 Program participation time limits—
 Program educational services and activities
 requirement 50.72.050
 YOUTH EMPLOYMENT AND CONSERVATION ACT
 (see WASHINGTON SERVICE CORP)
 YOUTH EMPLOYMENT EXCHANGE
 (see WASHINGTON SERVICE CORP)

**Title 192 WAC
Employment Security Department**

192-04	Practice and Procedure	
	Disposition of chapters formerly codified in this title	1
192-04-010	Adoption of model rules	8
192-04-020	Definitions	8
192-04-030	Appeals—Petitions for review—Payments under federal programs	8
192-04-040	Interested parties	8
192-04-050	Appeals—Petitions for hearing—Right to notice	8
192-04-060	Appeals—Petitions for hearing—Petitions for review—Time limitation—Forms	9
192-04-063	Aggrieved party	9
192-04-070	Mailing addresses—Obligations of parties	9
192-04-080	Appeals—Petitions for hearing—Petitions for review—Advisement orders—Time computation	9
192-04-090	Untimely appeals—Petitions for hearing or petitions for review—Good cause	9
192-04-100	Appeals—Petitions for hearing or petitions for review—Withdrawal of	9
192-04-110	Hearings—Representation—Cross-examination	10
192-04-120	Hearings—Postponements—Continuances	10
192-04-130	Discovery—Depositions and interrogatories	10
192-04-140	Consolidated cases	10
192-04-150	Decisions—Contents	10
192-04-160	Decision of commissioner—Incorporation	10
192-04-170	Decision of commissioner—Petition for review—Filing—Reply	10
192-04-175	Advisement order	11
192-04-180	Decisions—Disposition other than by hearing on the merits—Petition for review	11
192-04-190	Petition for reconsideration—Filing—Consideration—Disposition—Judicial review	11
192-04-200	Declaratory orders	11
192-04-210	Petitions for judicial review—Service on agency	11
192-12	Substantive Rules	
	Disposition of chapters formerly codified in this chapter	12
192-12-142	Claims, appeals, petitions—Filing not to be refused	14
192-12-151	Benefit payments—Not a determination of allowance	14
192-12-153	Payment of benefits—Initial allowance—Employer appeal	14
192-12-154	Payment of benefits by appeals tribunal—Claimant appeal	14
192-12-155	Payment of benefits by commissioner—Petition to court	14
192-12-156	Overpayment of benefits—Credit to employers' account	14
192-12-160	Withdrawals from trust fund	14
192-12-170	Unemployment compensation administration fund	15
192-12-173	Federal programs—Maintenance of regulations and guidelines	15
192-12-186	Training—Commissioner approval or denial of training	15
192-12-365	Interpretive regulation—Definition of suitable work as it applies to agricultural labor	15
192-15	Public Disclosure and Privacy of Information	
192-15-010	Purpose	16
192-15-020	Definitions	16
192-15-030	Description of central and field organization of employment security department	16
192-15-040	Procedures for obtaining public records—Designation of departmental employees responsible for public records	16
192-15-050	Commissioner's review of denials of public records requests	17
192-15-060	Access to individual or employing unit records or information by government agencies—RCW 50.13.060	17
192-15-070	Response to subpoenas—RCW 50.13.070	17
192-15-080	Access to public records for operation and management purposes—RCW 50.13.080	18
192-15-090	Consent to release of records or information—RCW 50.13.100	18
192-15-100	Disclosure related to employment security programs	18
192-15-110	Public records available	18
192-15-120	Office hours	18
192-15-130	Copying	18
192-15-140	Protection of public records	18
192-15-150	Records index—Available material	18
192-15-160	Responsible addressee	19
192-15-170	Forms	19

Chapter	TABLE OF CONTENTS	Page
192-16	Interpretative Regulations of the Commissioner of the Employment Security Department	
	Disposition of chapters formerly codified in this chapter	20
192-16-004	Interpretive regulation—Benefit year—Further defining initial separation from employment—RCW 50.04.030	21
192-16-005	Interpretative regulations—Applications for initial determinations—Backdating—RCW 50.04.030	21
192-16-009	Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.050(1)	21
192-16-015	Leaving work for marital or domestic reasons—RCW 50.20.050(1)(d)	22
192-16-016	Satisfying disqualification under RCW 50.20.050(1)(d) when separation is for reasons of marital status and marriage occurs after date of separation	22
192-16-025	Lump sum retirement payment	22
192-16-030	Interpretive regulation—Computation of pension deductions under RCW 50.04.323	23
192-16-050	Diversion of unemployment benefits to satisfy child support obligations	23
192-16-055	Interpretive regulations—Special coverage provisions—Bona fide notification of intent for substitute teacher—RCW 50.44.050(1)	23
192-17	State Environmental Policy Act—Interpretation	
192-17-010	Exemption from provisions of WAC 197-10-800	24
192-23	Benefit Payment Regulations	
	Disposition of chapters formerly codified in this chapter	25
192-23-001	Failure to respond to request for information results in a presumption of disqualifying information	25
192-23-011	Failure to provide details of employment	25
192-23-012	Failure to provide details on holiday and/or vacation pay	26
192-23-051	Failure to provide details on separation from employment	26
192-23-052	Failure to respond to a request for information regarding voluntary quit	26
192-23-081	Failure to provide details on a refusal of an offer of work	26
192-23-082	Failure to respond to a request for information regarding failure to apply for work	26
192-23-091	Failure to respond to a request for information regarding labor dispute	26
192-23-113	Failure to respond to a request to provide information regarding athletic employment	27
192-23-301	Failure to respond to a request for information regarding reasonable assurance of return to work	27
192-23-320	Failure to respond to a request for documentation of a systematic and sustained work search	27
192-23-350	Failure to respond to a request for pension information	27
192-23-900	Claimant liable for repayment of overpayments caused by conditional payment	27
192-28	Recovery of Benefit Overpayments	
	Disposition of chapters formerly codified in this title	28
192-28-122	Application of offsets or cash repayments	28
192-28-125	Recovery of benefit overpayment—Notification of right to appeal	28
192-28-130	Minimum payment calculation	28
198-28-135	Recovery of benefit overpayment—Overpayment collection and maximum benefit payable	28
192-28-145	Overpayment subject to interest charges	29
192-28-150	Benefit overpayment interest charges—Definitions	29
192-32	Timber Retraining Benefits	
	Disposition of chapters formerly codified in this title	30
192-32-010	Definitions	30
192-32-035	Residence in rural natural resources impact area at time of last separation from employment	31
192-32-050	Benefits payable only to workers enrolled in approved training	31
192-32-085	Full-time training	31
192-32-095	Certification of satisfactory progress	31
192-32-100	Modifying a training plan	31
192-32-115	Out-of-state training	31
192-32-130	Five weeks for work search following training	31
192-32-135	Thirteen weeks for remedial education	31
192-33	Workforce Development	
192-33-005	Definitions—Dislocated workers	32
192-33-006	Dislocated workers in rural natural resources impact areas	32
192-34	Temporary Total Disability	
192-34-010	Definitions	33
192-34-015	Exclusions	33
192-34-020	Failure to apply in a timely manner	33
192-34-025	Additional injuries	33

Chapter	TABLE OF CONTENTS	Page
192-35	Improving Employment Opportunities for People with Disabilities Through State Use Contracts	
192-35-010	Definitions.....	34
192-35-020	The state use advisory committee	34
192-35-030	Meetings.....	34
192-35-040	Application for listing as a vendor in good standing	34
192-35-050	Application fees	37
192-35-060	Period of eligibility	37
192-35-070	Denials and appeals.....	37
192-35-080	Application of brief adjudicative proceedings.....	37
192-35-090	Conduct of brief adjudicative proceedings.....	37
192-35-100	Preliminary record in brief adjudicative proceedings.....	37
192-35-110	Appeal of the brief adjudicative proceedings	38
192-35-120	Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings	38
192-36	Shared Work	
192-36-010	Information for employees participating in an approved shared work plan	39
192-36-015	Criteria for approving a shared work plan.....	39
192-36-020	Information for employers with an approved shared work plan.....	39
192-36-025	Are corporate officers eligible for participation in the shared work program?.....	39
192-40	Hearing and Review Procedures Under the Job Training Partnership Act	
192-40-010	Introduction—Purpose of rules	41
192-40-020	Definitions.....	41
192-40-030	Local hearings—Obligation	41
192-40-040	Review of local decisions.....	41
192-40-050	Review of local decisions—Finality of assistant commissioner decision	41
192-40-060	Review of decisions—Delegation of responsibility	42
192-40-070	State level hearing request.....	42
192-40-080	State level hearing procedure	42
192-40-090	State level decision by office of administrative hearings	42
192-40-100	Review of state level decision	42
192-40-110	Savings provision.....	42
192-100	General Terms Defined	
192-100-010	Reasonably prudent person defined.....	43
192-100-020	Continued claim defined	43
192-100-030	Week defined	43
192-100-035	Effective date of claim defined	43
192-100-500	General definitions—Relating to wages.....	43
192-100-510	Definitions relating to RCW 50.04.145 and 50.24.130	43
192-110	Applying for Unemployment Benefits	
192-110-005	Applying for unemployment benefits—General	44
192-110-010	Applications for benefits by interstate claimants.....	44
192-110-015	Applications by partially unemployed or standby workers—RCW 50.04.310, 50.20.010, and 50.20.130	44
192-110-020	How will the department verify my identity?.....	45
192-110-050	How do I reopen my claim?.....	45
192-110-200	Maximum benefits payable—RCW 50.20.120(1)(b)	45
192-110-210	Claim cancellation.....	45
192-120	Claimant Notices	
192-120-001	Information for claimants.....	46
192-120-010	Claimant information booklet	46
192-120-020	Presentation of benefit rights.....	46
192-120-030	Will I be told if my eligibility for benefits is questioned?.....	46
192-120-035	How will adequate notice be provided?	46
192-120-040	Will I be interviewed before a decision about my eligibility is made?.....	47
192-120-050	Conditional payment of benefits	47
192-130	Employer Notices	
192-130-050	Notice of filing of application—RCW 50.20.150	48
192-130-060	Notice to employer.....	48
192-130-065	Mailing addresses for notice to employer.....	48
192-130-070	Mailing of eligibility determinations—RCW 50.20.180	48
192-130-080	Procedure—Separation issues	49

Chapter	TABLE OF CONTENTS	Page
192-140	Reporting Requirements to Receive Benefits	
192-140-005	Filing weekly claims for benefits	50
192-140-010	Personal identification number.....	50
192-140-020	Will I be required to report in person?	50
192-140-025	What does "failure to respond" mean?	51
192-140-030	What happens if I do not report in person when directed?	51
192-140-070	What happens if I do not establish that I am able to or available for work?.....	51
192-140-075	What happens if I do not demonstrate that I am actively looking for work?.....	51
192-140-080	What happens if I do not comply with a job search directive?.....	51
192-140-085	What happens if I do not respond to a request for information regarding late claim(s)?.....	51
192-140-090	What happens if I do not report for reemployment services as provided in RCW 50.20.010(1)(e)?.....	51
192-140-100	What happens if I do not respond to a request for information regarding a discharge from work?.....	52
192-140-120	What happens if I do not provide information regarding attendance at school?.....	52
192-140-200	What happens if I certify that I am not able to or available for work?	52
192-140-210	What happens if I return to full-time work or report hours worked consistent with full-time work?.....	52
192-150	Job Separations	
192-150-050	Leaving work to accept bona fide job offer—RCW 50.20.050(1)(b)(i) and (2)(b)(i)	53
192-150-055	Leaving work because of illness or disability—General rules and definitions RCW 50.20.050(1)(b)(ii) and (2)(b)(ii).....	53
192-150-060	Leaving work because of disability—Notice to employer—RCW 50.20.050(1)(b)(ii) and (2)(b)(ii).....	53
192-150-065	What constitutes an employer-initiated mandatory transfer under RCW 50.20.050(1)(b)(iii)?	54
192-150-085	How to qualify after benefits have been denied	54
192-150-090	How to qualify for benefits after leaving work for marital or domestic reasons	54
192-150-100	Employer-initiated layoffs or reductions in force.....	55
192-150-110	Mandatory military transfers—RCW 50.20.050(2)(b)(iii)	55
192-150-115	Reduction in compensation of twenty-five percent or more—RCW 50.20.050(2)(b)(v)	55
192-150-120	Reduction in hours of twenty-five percent or more—RCW 50.20.050(2)(b)(vi)	55
192-150-125	Change in worksite—RCW 50.20.050(2)(b)(vii).....	55
192-150-130	Worksite safety—RCW 50.20.050(2)(b)(viii).....	56
192-150-135	Illegal activities at the worksite—RCW 50.20.050(2)(b)(ix)	56
192-150-140	Change in usual work that violates religious or sincere moral beliefs—RCW 50.20.050(2)(b)(x)	56
192-150-150	When is a separation considered a refusal of new work?	56
192-150-200	General provisions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066	57
192-150-205	Definitions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.....	57
192-150-210	Willful or wanton disregard—RCW 50.04.294(1)(a) and (2)	58
192-150-215	Discharges for felony or gross misdemeanor or for gross misconduct— Responsibility for providing information	58
192-150-220	Discharges for gross misconduct or for felony or gross misdemeanor.....	58
192-170	Availability for Work	
192-170-050	Suitable work factors—RCW 50.20.100 and 50.20.110	59
192-180	Job Search Requirements	
192-180-005	Registration for work—RCW 50.20.010(1) and 50.20.230.....	60
192-180-010	Job search requirements—Directives—RCW 50.20.010(1)(c) and 50.20.240.....	60
192-180-012	Requirements of individuals who leave work due to illness or disability.....	61
192-180-015	Tracking job search activities—RCW 50.20.240	61
192-180-020	Monitoring job search activities—RCW 50.20.240	61
192-180-025	Job search review interviews.....	61
192-180-030	Penalties	62
192-180-040	Directive to attend job search workshop or training course—RCW 50.20.044.....	62
192-200	School or Training	
192-200-005	Disqualification of students—RCW 50.20.095	63
192-200-010	Training defined—RCW 50.20.043	63
192-200-020	Commissioner approval of training—RCW 50.20.043	63
192-200-030	Unemployment benefits while in training	64
192-210	Special Category Occupations	
192-210-005	Definitions—Educational employees.....	65
192-210-010	What are the objective criteria used to define "academic year"?—RCW 50.44.050(5)	65
192-210-015	How will the department decide if reasonable assurance exists?—RCW 50.44.053.....	65
192-210-020	Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3)	65

Chapter	TABLE OF CONTENTS	Page
192-220	Overpayment Notice and Assessment	
192-220-010	Overpayments—Notification to individual	67
192-220-020	Overpayments—Fault provisions	67
192-220-030	Overpayments—Equity and good conscience provisions.....	68
192-230	Recovery of Overpayments	
192-230-100	Recovery of benefit overpayment—By repayment or offset against past or future benefits	69
192-240	Extended Benefits	
192-240-010	Regular shareable benefits defined.....	70
192-240-015	How to apply for extended benefits.....	70
192-240-020	Suitable work provisions—Regular shareable and extended benefits—RCW 50.22.020(3) and (4).....	70
192-240-025	Failure to apply for or accept suitable work—RCW 50.22.020(4)(b)— Regular shareable and extended benefits.....	70
192-240-030	Job search requirements to receive regular shareable or extended benefits—RCW 50.22-020(5)	70
192-240-035	How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons—RCW 50.22.020(7).....	71
192-240-040	Penalties	71
192-240-045	Moving to a state in an extended benefit period.....	71
192-270	Training Benefits for Dislocated Workers	
192-270-005	Definitions.....	72
192-270-010	Employment separations	72
192-270-015	Unlikely to return to employment	72
192-270-020	Employment in the aerospace industry.....	72
192-270-025	Employment in the forest products industry.....	72
192-270-030	Employment in the fishing industry	73
192-270-035	Timeframes	73
192-270-040	Enrollment in training	73
192-270-045	Requirements for applying for training benefits.....	73
192-270-050	Criteria for approving training plans	74
192-270-055	Funding—Waiting lists	74
192-270-060	Occupation in high demand outside labor market	74
192-270-065	Certification of satisfactory progress.....	75
192-270-070	Modifying a training plan.....	75
192-300	Registering for Unemployment Insurance Taxes	
192-300-050	Predecessor-successor relationship defined.....	76
192-300-100	Immediate family member of partners or corporate officers for RCW 50.04.150.....	76
192-300-150	Employer election to cover individual—Interstate reciprocal coverage agreement	76
192-300-170	Requirements for election of unemployment insurance coverage	77
192-300-180	Joint accounts	77
192-300-190	Owners of entities are not covered for unemployment insurance purposes.....	78
192-310	Reporting of Wages and Taxes Due	
192-310-010	Employer reports—RCW 50.12.070	79
192-310-020	Tax payments by employers—RCW 50.24.010	79
192-310-025	Application of payments	79
192-310-030	Reports and tax payments subject to penalty.....	79
192-310-035	Employer reports—Failure to report hours	80
192-310-040	Employer reports—Further defining hours worked—RCW 50.12.070.....	80
192-310-050	Employer records	81
192-310-055	Employer records—Farm operator or farm labor contractor	81
192-310-060	Tips as wages	81
192-310-070	Value of meals, lodging and in-kind compensation	82
192-310-100	Posting of notices by employers.....	82
192-320	Experience Rating and Benefit Charging	
192-320-050	Requirements of partial successors—Chapter 50.29 RCW	83
192-320-055	Predecessor-successor transfers through intermediaries.....	83
192-320-060	Delinquent predecessor taxes	83
192-320-065	Relief of benefit charges	83
192-320-070	Conditions for relief of benefit charges due to a voluntary quit	83
192-320-075	Charges to the separating employer—RCW 50.29.021(2)(c).....	84

Chapter	TABLE OF CONTENTS	Page
192-330	Collections and Refunds	
192-330-100	Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150	85
192-330-110	Delinquencies	85
192-330-150	Tribes and tribal entities—RCW 50.50.040	85
192-330-155	Notification to tribes	85
192-340	Audits and Technical Assistance	
192-340-010	Field audit expansion	86
192-340-100	Reasonable audit expenses—RCW 50.12.220(1)(b)	86
Title 10 WAC		
Administrative Hearings, Office of		
10-04	Agency Organization—Public Records	
10-04-010	Purpose	88
10-04-020	Function—Organization—Offices	88
10-04-030	Public records—Availability	88
10-04-040	Public records—Officer	88
10-04-050	Requests for public records	88
10-04-060	Copying fees	88
10-04-070	Exemptions	88
10-04-080	Review of denials of public records request	89
10-04-090	Protection of public records	89
10-08	Model Rules of Procedure	
	Disposition of sections formerly codified in this chapter	90
10-08-001	Declaration of purpose	90
10-08-035	Adjudicative proceedings—Application	90
10-08-040	Adjudicative proceedings—Notice of hearing	90
10-08-045	Adjudicative proceedings—Notice to limited-English-speaking parties	91
10-08-050	Adjudicative proceedings—Assignment of administrative law judge—Motion of prejudice	91
10-08-080	Computation of time	91
10-08-083	Notice of appearance	91
10-08-085	Consolidation of proceedings	91
10-08-090	Adjudicative proceedings—Continuances	91
10-08-110	Adjudicative proceedings—Filing and service of papers	92
10-08-120	Adjudicative proceedings—Subpoenas	92
10-08-130	Adjudicative proceedings—Prehearing conference	93
10-08-135	Summary judgment	93
10-08-140	Adjudicative proceedings—Evidence	93
10-08-150	Adjudicative proceedings—Interpreters	93
10-08-160	Adjudicative proceedings—Testimony under oath or affirmation	94
10-08-170	Adjudicative proceedings—Reporting—Recording	94
10-08-180	Adjudicative proceedings—Teleconference hearings	94
10-08-190	Adjudicative proceedings—Cameras—Recording devices	95
10-08-200	Adjudicative proceedings—Presiding officer	95
10-08-210	Adjudicative proceedings—Initial or final order	95
10-08-211	Adjudicative proceedings—Petition for review and replies	95
10-08-215	Adjudicative proceedings—Reconsideration	95
10-08-217	Shortened record on petition for review or appeal	95
10-08-219	Correction of transcript	95
10-08-220	Other law	96
10-08-230	Informal settlements	96
10-08-250	Declaratory orders—Form, content and filing	96
10-08-251	Declaratory orders—Procedural rights of persons in relation to petition	96
10-08-252	Declaratory orders—Disposition of petition	96
10-12	Compliance with State Environmental Policy Act	
10-12-010	Purpose	97
10-12-020	Application	97
10-16	Complaint Procedures	
10-16-010	Procedure for complaints regarding improper conduct of an administrative law judge	98

Chapter

TABLE OF CONTENTS

Page

10-20	Firearms and Weapons in Administrative Hearings	
10-20-010	Firearms, weapons prohibited in administrative hearings.....	99
10-20-020	Notice of prohibited weapons	99
10-20-030	Sanctions for possession of weapons	99

Title 192 WAC

EMPLOYMENT SECURITY DEPARTMENT

Chapters

192-04	Practice and procedure.	192-08-020	WAC 192-08-070.] Repealed by Order 2602, filed 4/24/70.
192-12	Substantive rules.		Appearance and practice before the employment security department—Appearance in certain proceedings may be limited to attorneys. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53. Prior: Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] As reenacted effective 1/1/66, now codified as WAC 192-08-002, 192-08-010 through 192-08-060, and 192-08-080 et seq. Repealed by Order 2602, filed 4/24/70.
192-15	Public disclosure and privacy of information.		Appearance and practice before the employment security department—Solicitation of business unethical. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-16	Interpretative regulations of the commissioner of the employment security department.		Appearance and practice before the employment security department—Standards of ethical conduct. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-17	State Environmental Policy Act—Interpretation.	192-08-030	Appearance and practice before the employment security department—Appearance by former employee of agency or former member of attorney general's staff. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-23	Benefit payment regulations.		Appearance and practice before the employment security department—Former employee as expert witness. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-28	Recovery of benefit overpayments.		Examiners—Conflicts of interest—Change of examiner. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-32	Timber retraining benefits.	192-08-040	Computation of time. [Regulation 15, adopted and effective 5/15/58. Prior: WAC 192-08-010.] Repealed by Order 2602, filed 4/24/70.
192-33	Workforce development.		Notice and opportunity for hearing in contested cases. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-34	Temporary total disability.		Service of process—By whom served. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
193-35	Improving employment opportunities for people with disabilities through state use contracts.	192-08-050	Service of process—Upon whom served. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-36	Shared work.		Service of process—Service upon parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-40	Hearing and review procedures under the Job Training Partnership Act.	192-08-060	Service of process—Method of service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-100	General terms defined.		Service of process—When service complete. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-110	Applying for unemployment benefits.	192-08-060	Service of process—Filing with agency. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-120	Claimant notices.		Interested parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-130	Employer notices.	192-08-061	Filing appeals. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-140	Reporting requirements to receive benefits.		
192-150	Job separations.	192-08-070	
192-170	Availability for work.		
192-180	Job search requirements.	192-08-080	
192-200	School or training.		
192-210	Special category occupations.	192-08-080	
192-220	Overpayment notice and assessment.		
192-230	Recovery of overpayments.	192-08-090	
192-240	Extended benefits.		
192-270	Training benefits for dislocated workers.	192-08-100	
192-300	Registering for unemployment insurance taxes.		
192-310	Reporting of wages and taxes due.	192-08-110	
192-320	Experience rating and benefit charging.		
192-330	Collections and refunds.	192-08-120	
192-340	Audits and technical assistance.		

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 192-08 PRACTICE AND PROCEDURE

Later promulgation, see chapter 192-09 WAC, Practice and procedure.	192-08-130	Service of process—When service complete. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-001 Promulgation. [Regulation 15 (part), adopted 5/18/58.] Repealed by Order 2602, filed 4/24/70.	192-08-140	Service of process—Filing with agency. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-002 Promulgation. [Regulation 16, last paragraph, effective 1/1/66.] Repealed by Order 2602, filed 4/24/70.	192-08-141	Interested parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-009 Preamble. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-142	Filing appeals. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-010 Appearance and practice before the employment security department—Who may appear. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53. Prior: Regulation 15, adopted and effective 5/15/58. Later promulgation, see		

192-08-143	Review by commissioner. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-330	Depositions upon interrogatories—Submission of interrogatories. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-150	Subpoenas—Where provided by law—Form. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-340	Depositions upon interrogatories—Interrogation. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-160	Subpoenas—Issuance to parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-350	Depositions upon interrogatories—Attestation and return. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-170	Subpoenas—Service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-360	Depositions upon interrogatories—Provisions of deposition rule. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/70.] Repealed by Order 2602, filed 4/24/70.
192-08-180	Subpoenas—Fees. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-370	Official notice—Matters of law. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-181	Subpoenas—Cost bills. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-380	Official notice—Material facts. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-190	Subpoenas—Proof of service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-390	Presumptions. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-200	Subpoenas—Quashing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-400	Stipulations and admissions of record. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-210	Subpoenas—Enforcement. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-410	Form and content of decisions in contested cases. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-220	Subpoenas—Geographical scope. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-420	Definition of issues before hearing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-221	Withdrawal of appeal. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-430	Prehearing conference rule. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-230	Depositions and interrogatories in contested cases—Right to take. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-440	Prehearing conference rule—Record of conference action. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-240	Depositions and interrogatories in contested cases—Scope. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-450	Submission of documentary evidence in advance. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-250	Depositions and interrogatories in contested cases—Officer before whom taken. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-460	Excerpts from documentary evidence. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-260	Depositions and interrogatories in contested cases—Authorization. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-470	Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-270	Depositions and interrogatories in contested cases—Protection of parties and deponents. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-480	Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-280	Depositions and interrogatories in contested cases—Oral examination and cross-examination. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-490	Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-290	Depositions and interrogatories in contested cases—Recordation. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-500	Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 192-08-470 or 192-08-480. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-300	Depositions and interrogatories in contested cases—Signing attestation and return. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-510	Continuances. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-310	Depositions and interrogatories in contested cases—Use and effect. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-511	Informal disposition of hearing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-320	Depositions and interrogatories in contested cases—Fees of officers and deponents. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.		

- 192-08-520 Rules of evidence—Admissibility criteria. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-540 Petitions for rule-making, amendment or repeal—Who may petition. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-550 Petitions for rule-making, amendment or repeal—Requirements. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-560 Petitions for rule-making, amendment or repeal—Agency must consider. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-570 Petitions for rule-making, amendment or repeal—Notice of disposition. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-580 Declaratory rulings. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-590 Forms. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- Chapter 192-09
PRACTICE AND PROCEDURE**
- 192-09-010 Promulgation. [Order 2602, § 192-09-010, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-020 Promulgation. [Order 2602, § 192-09-020, filed 4/24/70. Formerly WAC 192-08-001.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-030 Preamble. [Statutory Authority: RCW 50.12.010 and 50.12.040. 89-03-070 (Order 3-89), § 192-09-030, filed 1/18/89. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-030, filed 8/14/78; Order 2602, § 192-09-030, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-035 Predetermination procedure—Separation issue. [Order 2-72, § 192-09-035, filed 7/6/72.] Repealed by 89-20-064 (Order 4-89), filed 10/4/89, effective 10/9/89. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-040 Interested parties defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-040, filed 5/15/85. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-040, filed 8/14/78; Order 2602, § 192-09-040, filed 4/24/70.] Repealed by 89-20-064 (Order 4-89), filed 10/4/89, effective 10/9/89. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-050 Appearance—Who may appear. [Order 2602, § 192-09-050, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-060 Appeals—Right to notice of. [Statutory Authority: Chapter 50.04 RCW, RCW 50.29.020, 50.12.010 and 50.12.040. 85-21-023 (Order 5-85), § 192-09-060, filed 10/10/85. Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-060, filed 5/15/85. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-060, filed 8/14/78; Order 2602, § 192-09-060, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-062 Appeals—Payments under federal programs. [Order 2-72, § 192-09-062, filed 7/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-063 Appeals—Who may appeal—Time limitation. [Statutory Authority: RCW 50.12.010 and 50.12.040. 89-03-070 (Order 3-89), § 192-09-063, filed 1/18/89; 85-11-038 (Order 1-85), § 192-09-063, filed 5/15/85; Order 2602, § 192-09-063, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-065 Appeals—Time computation. [Order 2602, § 192-09-065, filed 4/24/70. Formerly WAC 192-08-070.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-070 Appeals—Withdrawal of. [Order 2602, § 192-09-070, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-100 Hearings—Notice requirement. [Order 2-73, § 192-09-100, filed 11/15/73; Order 2602, § 192-09-100, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-105 Hearings—Scheduling—Location. [Order 2602, § 192-09-105, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-110 Hearings—Special scheduling—Postponement. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-110, filed 8/14/78; Order 2602, § 192-09-110, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-115 Hearings—Open to public—Exceptions. [Order 2602, § 192-09-115, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-120 Hearings—Representation—Cross-examination. [Order 2602, § 192-09-120, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-125 Hearings—Pleadings and papers to be served. [Order 2602, § 192-09-125, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-130 Hearings—Duty of examiner. [Order 2602, § 192-09-130, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-135 Hearings—Evidence. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-135, filed 8/14/78; Order 2602, § 192-09-135, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-140 Hearings—Disposition of motions and objections. [Order 2602, § 192-09-140, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-145 Hearings—Objections to be specified. [Order 2602, § 192-09-145, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-150 Hearings—Admissibility of evidence. [Order 2602, § 192-09-150, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-155 Hearings—Stipulations. [Order 2602, § 192-09-155, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-160 Hearings—Continuance. [Order 2602, § 192-09-160, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-165 Hearings—Consolidated cases. [Order 2602, § 192-09-165, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-170 Hearings—Separate locations. [Order 2602, § 192-09-170, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-200 Subpoenas—Procedure for issuance. [Order 2602, § 192-09-200, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-205 Subpoenas—Form. [Order 2602, § 192-09-205, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-210 Subpoenas—Service. [Order 2602, § 192-09-210, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.

- 192-09-215 Subpoenas—Proof of service. [Order 2602, § 192-09-215, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-220 Subpoenas—Attendance fees—How computed. [Order 2602, § 192-09-220, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-225 Subpoenas—Fees—Certification. [Order 2602, § 192-09-225, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-230 Subpoenas—Procedure to quash. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-230, filed 8/14/78; Order 2602, § 192-09-230, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-235 Subpoenas—Judicial enforcement. [Order 2602, § 192-09-235, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-240 Subpoenas—Geographical scope. [Order 2602, § 192-09-240, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-300 Decisions—Contents. [Order 2602, § 192-09-300, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-305 Decisions—Preparation and service. [Order 2602, § 192-09-305, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-310 Decisions—Disposition by other than decision on the merits—Petition from. [Order 2602, § 192-09-310, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-315 Decisions—Petition for review. [Statutory Authority: RCW 50.12.010 and 50.12.040. 89-03-070 (Order 3-89), § 192-09-315, filed 1/18/89. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-315, filed 8/14/78; Order 2602, § 192-09-315, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-400 Special proceedings—Prehearing conference—Purpose. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-400, filed 8/14/78; Order 2602, § 192-09-400, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-405 Special proceedings—Prehearing conference—Examiner's order. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-405, filed 8/14/78; Order 2602, § 192-09-405, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-410 Special proceedings—Depositions and interrogatories. [Order 2602, § 192-09-410, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-415 Special proceedings—Reopening of a closed case. [Order 2602, § 192-09-415, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-420 Special proceedings—Challenge of examiner—Bias or interest. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-420, filed 8/14/78; Order 2602, § 192-09-420, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-425 Special proceedings—Challenge of commissioner—Bias or interest. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-425, filed 8/14/78; Order 2602, § 192-09-425, filed 4/24/70.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-430 Petition for rule making, amendment or repeal—Who may petition. [Order 4-72, § 192-09-430, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-435 Petition for rule making, amendment or repeal—Requirements. [Order 4-72, § 192-09-435, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-440 Petition for rule making, amendment or repeal—Form. [Order 4-72, § 192-09-440, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-445 Petition for rule making, amendment or repeal—Consideration. [Order 4-72, § 192-09-445, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-450 Petition for rule making, amendment or repeal—Disposition. [Order 4-72, § 192-09-450, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-455 Declaratory ruling—Who may petition—Scope. [Order 4-72, § 192-09-455, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-09-460 Declaratory ruling—Form. [Order 4-72, § 192-09-460, filed 11/6/72.] Repealed by 89-24-030, filed 11/30/89, effective 1/1/90. Statutory Authority: RCW 50.12.010 and 50.12.040.

Chapter 192-10

HEARING AND REVIEW UNDER THE WORK INCENTIVE PROGRAM

- 192-10-010 Hearings and review under the work incentive program. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-010, filed 8/14/78; Order 4-72, § 192-10-010, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-015 Computation of time. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-015, filed 8/14/78.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-020 Purpose and scope. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-020, filed 8/14/78; Order 4-72, § 192-10-020, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-030 Hearings—Requests—Time limitations. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-030, filed 8/14/78; Order 4-72, § 192-10-030, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-040 Hearings—Requests—How made. [Order 4-72, § 192-10-040, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-050 Hearings—Preparation and service. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-050, filed 8/14/78; Order 4-72, § 192-10-050, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-060 Hearings—Notice requirements. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-060, filed 8/14/78; Order 4-72, § 192-10-060, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-070 Hearings—Scheduling—Location. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-070, filed 8/14/78; Order 4-72, § 192-10-070, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-080 Parties and presentation of the case. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-080, filed 8/14/78; Order 4-72, § 192-10-080, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-090 Duties of the examiner. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-090, filed 8/14/78; Order 4-72, § 192-10-090,

- filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-100 Testimony and examination of witnesses. [Order 4-72, § 192-10-100, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-110 Recording of testimony. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-110, filed 8/14/78; Order 4-72, § 192-10-110, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-120 Access to records. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-120, filed 8/14/78; Order 4-72, § 192-10-120, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-130 Admissibility of evidence. [Order 4-72, § 192-10-130, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-140 Documentary evidence. [Order 4-72, § 192-10-140, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-150 Stipulations. [Order 4-72, § 192-10-150, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-160 Deposition and interrogatories. [Order 4-72, § 192-10-160, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-170 Subpoenas—Procedure for issuance. [Order 4-72, § 192-10-170, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-180 Subpoenas—Service. [Order 4-72, § 192-10-180, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-190 Subpoenas—Proof of service. [Order 4-72, § 192-10-190, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-200 Subpoenas—Attendance fees. [Order 4-72, § 192-10-200, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-210 Procedure to quash subpoenas. [Order 4-72, § 192-10-210, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-220 Judicial enforcement. [Order 4-72, § 192-10-220, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-230 Geographical scope. [Order 4-72, § 192-10-230, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-240 Medical evaluation. [Order 4-72, § 192-10-240, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-250 Continuances. [Order 4-72, § 192-10-250, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-260 Disposition by decision on the merits. [Order 4-72, § 192-10-260, filed 11/6/72.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 74.22.110 and 74.23.120.
- 192-10-265 Decision of appeals examiner. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-265, filed 8/14/78.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-270 Disposition by decision other than on the merits. [Order 4-72, § 192-10-270, filed 11/6/72.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 74.22.110 and 74.23.120.
- 192-10-280 Decisions—Preparation and service. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-280, filed 8/14/78; Order 4-72, § 192-10-280, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-290 Certification of novel questions of law or policy. [Order 4-72, § 192-10-290, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-300 Petition for review by the commissioner. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-300, filed 8/14/78; Order 4-72, § 192-10-300, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-310 Commissioner's review procedure. [Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-310, filed 8/14/78; Order 4-72, § 192-10-310, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-320 Withdrawal of request for hearing and of petition for review. [Order 4-72, § 192-10-320, filed 11/6/72.] Repealed by 94-22-043, filed 10/28/94, effective 11/28/94. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-10-330 Representation. [Order 4-72, § 192-10-330, filed 11/6/72.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.

Chapter 192-14 PUBLIC DISCLOSURE

- 192-14-010 Purpose. [Order 2-73, § 192-14-010, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-010.
- 192-14-020 Definitions. [Order 2-73, § 192-14-020, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-020.
- 192-14-030 Description of central and field organization of employment security department. [Order 2-73, § 192-14-030, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-030.
- 192-14-040 Operations and procedures. [Order 2-73, § 192-14-040, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-050 Public records available. [Order 2-73, § 192-14-050, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-060 Public records officer. [Order 2-73, § 192-14-060, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-070 Office hours. [Order 2-73, § 192-14-070, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-120.
- 192-14-080 Requests for public records. [Order 2-73, § 192-14-080, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-090 Copying. [Order 2-73, § 192-14-090, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-120.
- 192-14-100 Exemptions. [Order 2-73, § 192-14-100, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-110 Review of denials of public records requests. [Order 2-73, § 192-14-110, filed 11/15/73.] Repealed by 78-09-

	027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.		filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-14-120	Protection of public records. [Order 2-73, § 192-14-120, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.	192-24-010	Claimant information booklet. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-010, filed 6/18/84.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-14-130	Records index. [Order 2-73, § 192-14-130, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-150.	192-24-020	Presentation of benefit rights. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-020, filed 6/18/84.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-14-140	Responsible addressee. [Order 2-73, § 192-14-140, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-160.	192-24-030	Claimant directive. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-030, filed 6/18/84.] Repealed by 99-13-002, filed 6/3/99, effective 7/4/99. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-14-150	Forms. [Order 2-73, § 192-14-150, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-170.		
	Chapter 192-18		Chapter 192-30
	EMPLOYEE CONFLICT OF INTEREST		MARGINAL LABOR FORCE ATTACHMENT
192-18-010	No outside compensation for performing official duties. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-010, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-010	Marginal labor force attachment definitions. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-010, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-012	Security of personal identification number (PIN). [Statutory Authority: RCW 50.12.010 and 50.12.040. 88-16-076 (Order 7-88), § 192-18-012, filed 8/2/88.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-020	Responsibilities of the department in determining MLFA status. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-020, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-020	Use of influence or position to aid individuals or organizations. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-020, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-030	Suspension of marginal labor force attachment requirements for claimants unemployed due to government action. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-030, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-030	Limitations on outside employment—Potential conflict of duties. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-030, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-040	Suspension of marginal labor force attachment requirements for claimants unemployed due to economic distress. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-040, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-040	Limitation on outside employment—Working hours—Use of state resources prohibited—Procedures. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-040, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-100	Modification of marginal labor force attachment work search requirements for economic conditions within a labor market area. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-100, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-050	Limitations on transacting business with friends, relatives or co-workers. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-050, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-200	Work search responsibilities for MLFA claimants. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-200, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-060	Definitions—Friend, relatives, co-workers. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-060, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-210	Job service center work search activity plans for MLFA claimants. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-210, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-18-070	Violations—Sanctions. [Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-070, filed 6/12/80.] Repealed by 98-14-031, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.	192-30-220	Work search models—Purpose and description. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-220, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
	Chapter 192-20	192-30-230	Work search model—Definition of terms. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-230, filed 11/6/85.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
	OLD-AGE AND SURVIVORS INSURANCE		
192-20-010	Due dates for submission of reports and contributions—Interest on delinquent contributions. [Statutory Authority: RCW 41.48.050 (3)(a) and 50.12.010. 83-23-102 (Order 4-83), § 192-20-010, filed 11/23/83. Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-20-010, filed 6/12/80.] Repealed by 98-14-032, filed 6/23/98, effective 7/24/98. Statutory Authority: RCW 50.12.010 and 50.12.040.		
	Chapter 192-24		
	CLAIMANT INFORMATION		
192-24-001	Information for claimants. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-001, filed 6/18/84.] Repealed by 99-08-073,		

Chapter 192-42
FAMILY INDEPENDENCE PROGRAM EMPLOYMENT,
TRAINING, AND EDUCATION RULES

192-42-081

Dispute resolution process. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-081, filed 12/11/89, effective 1/11/90.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.

- 192-42-005 Duration of program. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-005, filed 5/31/88, effective 7/1/88.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-010 Definitions. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-010, filed 12/11/89, effective 1/11/90. Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-010, filed 5/31/88, effective 7/1/88.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-020 FIP employment and training. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-020, filed 5/31/88, effective 7/1/88.] Repealed by 90-01-014, filed 12/11/89, effective 1/11/90. Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW.
- 192-42-021 Orientation. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-021, filed 12/11/89, effective 1/11/90.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-030 Employability plan. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-030, filed 12/11/89, effective 1/11/90. Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-030, filed 5/31/88, effective 7/1/88.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-040 Job search allowance. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-040, filed 5/31/88, effective 7/1/88.] Repealed by 90-01-014, filed 12/11/89, effective 1/11/90. Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW.
- 192-42-050 Funding criteria. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-050, filed 5/31/88, effective 7/1/88.] Repealed by 90-01-014, filed 12/11/89, effective 1/11/90. Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW.
- 192-42-056 Criteria for approval of employment and training activities and funding. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-056, filed 12/11/89, effective 1/11/90.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-057 Notice of decisions. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-057, filed 12/11/89, effective 1/11/90.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-058 Job search allowance. [Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW. 90-01-014, § 192-42-058, filed 12/11/89, effective 1/11/90.] Repealed by 95-05-048, filed 2/10/95, effective 3/13/95. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-060 Labor dispute. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-060, filed 5/31/88, effective 7/1/88.] Repealed by 96-18-035, filed 8/28/96, effective 9/28/96. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-42-070 Grievance procedure and appeals—Administrative review. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-070, filed 5/31/88, effective 7/1/88.] Repealed by 90-01-014, filed 12/11/89, effective 1/11/90. Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW.
- 192-42-080 Dispute resolution process. [Statutory Authority: Chapter 74.21 RCW, RCW 50.12.010 and 51.12.040. 88-12-051 (Order 5-88), § 192-42-080, filed 5/31/88, effective 7/1/88.] Repealed by 90-01-014, filed 12/11/89, effective 1/11/90. Statutory Authority: RCW 50.12.010, 50.12.040 and chapter 74.21 RCW.

Chapter 192-04 WAC

PRACTICE AND PROCEDURE

WAC

192-04-010	Adoption of model rules.
192-04-020	Definitions.
192-04-030	Appeals—Petitions for review—Payments under federal programs.
192-04-040	Interested parties.
192-04-050	Appeals—Petitions for hearing—Right to notice.
192-04-060	Appeals—Petitions for hearing—Petitions for review—Time limitation—Forms.
192-04-063	Aggrieved party.
192-04-070	Mailing addresses—Obligations of parties.
192-04-080	Appeals—Petitions for hearing—Petitions for review—Advisement orders—Time computation.
192-04-090	Untimely appeals—Petitions for hearing or petitions for review—Good cause.
192-04-100	Appeals—Petitions for hearing or petitions for review—Withdrawal of.
192-04-110	Hearings—Representation—Cross-examination.
192-04-120	Hearings—Postponements—Continuances.
192-04-130	Discovery—Depositions and interrogatories.
192-04-140	Consolidated cases.
192-04-150	Decisions—Contents.
192-04-160	Decision of commissioner—Incorporation.
192-04-170	Decision of commissioner—Petition for review—Filing—Reply.
192-04-175	Advisement order.
192-04-180	Decisions—Disposition other than by hearing on the merits—Petition for review.
192-04-190	Petition for reconsideration—Filing—Consideration—Disposition—Judicial review.
192-04-200	Declaratory orders.
192-04-210	Petitions for judicial review—Service on agency.

WAC 192-04-010 Adoption of model rules. The model rules of procedure contained in chapter 10-08 WAC, as they exist now or may be hereafter amended, are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure before this agency. The rules contained in this chapter will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting provisions of the model rules of procedure. The model rules of procedure will be included in the departmental publication provided for in RCW 50.12.160.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-010, filed 11/30/89, effective 1/1/90.]

WAC 192-04-020 Definitions. Unless the context in this chapter clearly indicates otherwise, the following terms and phrases shall have these meanings:

(1) "Appeal" means a request for a hearing before and decision by the office of administrative hearings in a matter involving unemployment insurance benefits.

(2) "Petition for hearing" means a request for hearing before and decision by the office of administrative hearings in a matter involving unemployment insurance taxes.

(3) "Petition for review" means a request directed to the commissioner for a review of the proceedings held and decision issued by the office of administrative hearings.

(4) "Advisement order" means an order issued by the commissioner on his or her own motion assuming jurisdiction

over a matter heard and/or decided by the office of administrative hearings.

(5) "Commissioner" means the commissioner's review office of the employment security department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-020, filed 11/30/89, effective 1/1/90.]

WAC 192-04-030 Appeals—Petitions for review—Payments under federal programs. When the applicable federal law, regulations or guidelines for any federal program administered by the employment security department provides for the right of appeal, petition for hearing or petition for review from a determination or decision of the employment security department or the office of administrative hearings, the procedures outlined in Title 50 RCW, Title 34 RCW, and chapter 192-04 WAC shall, to the extent that said procedures are consistent with the federal law, regulations and guidelines, be utilized for the disposition of such appeals or petitions for review.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-030, filed 11/30/89, effective 1/1/90.]

WAC 192-04-040 Interested parties. In all cases adjudicated under Title 50 RCW the employment security department is an interested party. Other interested parties are:

(1) **Benefit appeals.**

(a) The claimant;

(b) Any employer entitled to notice under WAC 192-130-060, and

(c) An interested employer as defined in WAC 192-28-125, in cases involving the payment or recovery of benefits, including but not limited to the entitlement to, eligibility for or qualification for waiting period credit or benefits.

(2) **Tax appeals.** Employers whose contributions, experience rating, benefit charges, or rate of contribution are affected by:

(a) An assessment for contributions;

(b) A denial of a claim for refund of contributions, interest, penalties;

(c) A denial of a request for relief of benefit charges made to their account; or

(d) Their determined or redetermined rate of contribution.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-04-040, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 89-20-064 (Order 4-89), § 192-04-040, filed 10/4/89, effective 10/9/89.]

WAC 192-04-050 Appeals—Petitions for hearing—Right to notice. Notice of appeal or petition for hearing rights shall be set forth on the face of, or as an attachment to, each of the following:

(1) Redetermination of an initial monetary determination.

(2) Determination of allowance or denial of waiting period credit or benefits.

(3) Redetermination of allowance or denial of waiting period credit or benefits.

(4) An overpayment assessment or a denial of a request for waiver of an overpayment.

(5) Order and notice of assessment of contributions, interest, or penalties.

(6) Denial of a claim for refund of contributions, interest, or penalties.

(7) Denial of a request for relief of benefit charges made to an employer's account.

(8) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.

(9) Denial of approval or extension of standby status.

(10) Denial of a request for commissioner approved training or training benefits.

(11) Notice to separating employer of liability for all benefits paid on a claim as provided in RCW 50.29.021 (2)(c).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-04-050, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040, 89-24-030, § 192-04-050, filed 11/30/89, effective 1/1/90.]

WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation—Forms. (1) **Appeals and petitions for hearing.** Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 may file a written appeal or petition for hearing by mailing it or sending it via electronic telefacsimile to the unemployment claims telecenter indicated on the determination notice or order and notice of assessment.

The appeal or petition for hearing shall be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal and/or petition for hearing shall be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review in accordance with the provisions of WAC 192-04-170. The petition for review shall be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review shall be filed in accordance with the provisions of RCW 50.32.025.

(3) **Forms.** At the request of an interested, aggrieved party, the employment security department shall furnish forms for the filing of a notice of appeal, petition for hearing, or petition for review, but the use of such forms is not a jurisdictional requirement.

[Statutory Authority: RCW 50.20.010 and 50.12.040, 99-15-069, § 192-04-060, filed 7/19/99, effective 8/19/99. Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-060, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040, 89-24-030, § 192-04-060, filed 11/30/89, effective 1/1/90.]

(2005 Ed.)

WAC 192-04-063 Aggrieved party. An aggrieved party is a claimant or an employer who receives an adverse decision of the department set forth in WAC 192-04-050 or an adverse decision of the office of administrative hearings.

[Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-063, filed 8/31/95, effective 10/1/95.]

WAC 192-04-070 Mailing addresses—Obligations of parties. Once an appeal or petition for hearing has been filed, any interested party must notify the office of administrative hearings of any change of mailing address.

Once a petition for review has been filed, any interested party must notify the commissioner's review office of any change of mailing address.

Any interested party who fails to comply with this regulation will not be deemed to have good cause for failure to appear at a hearing or for late filing of a petition for review or untimely submission of a reply or petition for reconsideration.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 89-24-030, § 192-04-070, filed 11/30/89, effective 1/1/90.]

WAC 192-04-080 Appeals—Petitions for hearing—Petitions for review—Advisement orders—Time computation. The time within which an appeal, a petition for hearing, a petition for review, or advisement order is to be perfected, under the provisions of the Employment Security Act (Title 50 RCW, as amended) shall be computed by excluding the day of delivery or mailing of the determination, redetermination, denial, order and notice of assessment, or decision and including the last day. If the last day is a Saturday or Sunday or a holiday, as defined in RCW 1.16.050, the appeal, petition for hearing, petition for review or advisement order must be perfected no later than the next business day.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 89-24-030, § 192-04-080, filed 11/30/89, effective 1/1/90.]

WAC 192-04-090 Untimely appeals—Petitions for hearing or petitions for review—Good cause. (1) The following factors shall be considered in determining whether good cause exists under RCW 50.32.075 for the late filing of an appeal, petition for hearing or petition for review:

(a) The length of the delay,

(b) The excusability of the delay, and

(c) Whether acceptance of the late filed appeal, petition for hearing, or petition for review will result in prejudice to other interested parties, including the department.

(2) In determining the excusability for the late filing of an appeal, petition for hearing or petition for review, the office of administrative hearings or the commissioner's review office shall take into account any physical, mental, educational or linguistic limitations of the appealing or petitioning party, including any lack of facility with the English language.

[Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-090, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040, 89-24-030, § 192-04-090, filed 11/30/89, effective 1/1/90.]

WAC 192-04-100 Appeals—Petitions for hearing or petitions for review—Withdrawal of. Any interested party

[Title 192 WAC—p. 9]

may withdraw his or her appeal, petition for hearing or petition for review at any time prior to a decision thereon, in which case the previous determination, redetermination, denial, order and notice of assessment or decision shall be final in accordance with the provisions of the Employment Security Act. Such withdrawal shall, however, be subject to the approval of the office of administrative hearings in the case of an appeal or petition for hearing, or of the commissioner in the case of a petition for review.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-100, filed 11/30/89, effective 1/1/90.]

WAC 192-04-110 Hearings—Representation—Cross-examination. Any interested party, or his or her legally authorized representative, shall have the right to give testimony and to examine and cross-examine any other interested party and/or witnesses with respect to facts material and relevant to the issues involved.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-110, filed 11/30/89, effective 1/1/90.]

WAC 192-04-120 Hearings—Postponements—Continuances. Any party to a hearing may request a postponement of a hearing at any time prior to the actual convening of the hearing. The granting or denial of the request will be at the discretion of the presiding administrative law judge.

The presiding administrative law judge may in the exercise of sound discretion grant a continuance of a hearing at any time at the request of any interested party or on his or her own motion.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-120, filed 11/30/89, effective 1/1/90.]

WAC 192-04-130 Discovery—Depositions and interrogatories. At the discretion of the presiding administrative law judge he or she may cause to be taken depositions or interrogatories on his or her own motion, or at the request of any interested party.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-130, filed 11/30/89, effective 1/1/90.]

WAC 192-04-140 Consolidated cases. The presiding administrative law judge may hear individual matters on a consolidated record if there is a substantial identity of issues and the rights of no party will be adversely affected thereby. Such procedure should provide for the hearing of additional or unique issues relating to individual cases.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-140, filed 11/30/89, effective 1/1/90.]

WAC 192-04-150 Decisions—Contents. Every decision issued by the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, and every decision issued by the commissioner pursuant to RCW 50.32.080, other than an interim order or an order granting or denying a motion for reconsideration or a stay, shall:

(1) Be correctly captioned as to the name of the agency and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(6) Contain an initial or final order disposing of all contested issues;

(7) Be accompanied by or contain a statement of petition for review or petition for judicial review rights.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-150, filed 11/30/89, effective 1/1/90.]

WAC 192-04-160 Decision of commissioner—Incorporation. A decision of the commissioner issued pursuant to RCW 50.32.080 may incorporate by reference any portion of the decision under review. Such incorporation shall be deemed to meet the requirements of WAC 192-04-150.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-160, filed 11/30/89, effective 1/1/90.]

WAC 192-04-170 Decision of commissioner—Petition for review—Filing—Reply. (1) The written petition for review shall be filed by mailing it to the Agency Records Center, Employment Security Department, Post Office Box 9046, Olympia, WA 98507-9046, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is the earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed contemporaneously therewith. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the acknowledgement date on the petition for review. The commissioner's review office will also mail copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box 9046, Olympia, WA 98504-9046. The reply must be received by the commissioner's review office within fifteen days of the date of mailing of the acknowledged petition for review. An informational copy shall be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof and the reply to the petition for review and argument in support thereof shall:

(a) Be captioned as such, set forth the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by his or her representative.

(b) Be legible, reproducible and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the

period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation shall not be considered in the disposition of the case absent a showing that failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-04-170, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.12.010, [50.12.]040 and 34.05.310 et seq. 95-18-055, § 192-04-170, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-170, filed 11/30/89, effective 1/1/90.]

WAC 192-04-175 Advisement order. On behalf of the commissioner, the commissioner's review office may prevent finality of any decision of the office of administrative hearings and take jurisdiction of the proceedings for review thereof by issuing an order so providing and mailing a copy of the advisement order to the parties of record and their representatives within the same period allowed for the filing of a petition for review. The parties of record will be given fifteen days to submit argument in support of or in opposition to the decision of the office of administrative hearings, as well as in response to any departmental memorandum suggesting to the commissioner's review office that it consider taking a decision of the office of administrative hearings under advisement. That argument and/or response from the parties of record must be hand delivered or mailed to the commissioner's review office and received by that office within fifteen days from the date of mailing of the order taking the decision of the office of administrative hearings under advisement.

[Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-175, filed 8/31/95, effective 10/1/95.]

WAC 192-04-180 Decisions—Disposition other than by hearing on the merits—Petition for review. The presiding administrative law judge may dispose of any appeal or petition for hearing by an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order or an order of default. There shall be no petition for review rights from an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing or a consent order.

Any interested party aggrieved by the entry of an order of default may file a petition for review from such order by complying with the filing requirements set forth in WAC 192-04-170: Provided, however, That the default of such party shall be set aside by the commissioner only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, the commissioner shall remand the matter to the office of administrative hearings for hearing and decision.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-180, filed 11/30/89, effective 1/1/90.]

WAC 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review. (1) A written petition for reconsideration and argument in support

(2005 Ed.)

thereof may be filed within ten days of the date of mailing or delivery of the decision of the commissioner, whichever is the earlier. It shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box 9046, Olympia, WA 98507-9046, and to all other parties of record and their representatives.

(2) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that (a) there is obvious material, clerical error in the decision or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant to WAC 192-04-170.

(3) A petition for reconsideration shall be deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either (a) dispose of the petition for reconsideration or (b) mail or deliver to the parties a written notice specifying the date by which he or she will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(4) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-04-190, filed 4/5/99, effective 5/6/99; 89-24-030, § 192-04-190, filed 11/30/89, effective 1/1/90.]

WAC 192-04-200 Declaratory orders. The commissioner will not issue a declaratory order on any matter that may be adjudicated under any statute, regulation or other provision of law. No declaratory order will be issued which is merely an advisory opinion.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-200, filed 11/30/89, effective 1/1/90.]

WAC 192-04-210 Petitions for judicial review—Service on agency. Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been received by the: Agency Records Center at 212 Maple Park Drive, Olympia, WA 98504.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-210, filed 11/30/89, effective 1/1/90.]

Chapter 192-12 WAC

SUBSTANTIVE RULES

WAC

192-12-142	Claims, appeals, petitions—Filing not to be refused.	192-12-020
192-12-151	Benefit payments—Not a determination of allowance.	
192-12-153	Payment of benefits—Initial allowance—Employer appeal.	
192-12-154	Payment of benefits by appeals tribunal—Claimant appeal.	192-12-025
192-12-155	Payment of benefits by commissioner—Petition to court.	
192-12-156	Overpayment of benefits—Credit to employers' account.	
192-12-160	Withdrawals from trust fund.	
192-12-170	Unemployment compensation administration fund.	
192-12-173	Federal programs—Maintenance of regulations and guidelines.	
192-12-186	Training—Commissioner approval or denial of training.	
192-12-365	Interpretive regulation—Definition of suitable work as it applies to agricultural labor.	

filed 6/24/92, effective 7/25/92. Statutory Authority: RCW 50.12.010 and 51.12.040.
 Week defined. [Regulation 2, adopted 6/10/53, effective 6/20/53.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
 Requirements of corporations electing coverage of corporate officers. [Statutory Authority: RCW 50.04.165, 50.12.010 and 50.12.040. 89-03-068 (Order 1-89), § 192-12-025, filed 1/18/89. Statutory Authority: RCW 50.04.165, 50.12.010, 50.12.040 and 1986 c 110. 86-14-031 (Order 2-86), § 192-12-025, filed 6/26/86. Statutory Authority: RCW 50.04.165, 50.12.010 and 50.12.040. 83-23-034 (Order 3-83), § 192-12-025, filed 11/9/83. Statutory Authority: RCW 50.04.165, 50.04.320, 50.12.010 and 50.12.040. 81-23-010 (Order 4-81), § 192-12-025, filed 11/10/81.] Repealed by 00-05-064, filed 2/15/00, effective 3/17/00. Statutory Authority: RCW 50.12.010, 50.12.040.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-12-005	Adequate notice and opportunity to be heard defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-12-005, filed 5/28/87, effective 8/30/87.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.	
192-12-010	General definitions and use of terms. [Regulation 1, adopted 6/10/53, effective 6/20/53.] Repealed by 99-20-125, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.010.	192-12-035
192-12-011	Continued claim definitions. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-12-011, filed 5/28/87, effective 8/30/87.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.	192-12-040
192-12-012	Conditional payment of continued claim recipients when eligibility is questioned. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-12-012, filed 5/28/87, effective 8/30/87.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.	192-12-041
192-12-015	Definitions relating to RCW 50.04.145 and 50.24.130. [Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-12-015, filed 8/17/82.] Repealed by 99-20-126, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.145 and 50.24.130.	192-12-042
192-12-017	Definitions relating to use of shop facilities contingent upon compensation—Other consideration—RCW 50.04.225. [Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-12-017, filed 8/17/82.] Repealed by 92-14-047, filed 6/24/92, effective 7/25/92. Statutory Authority: RCW 50.12.010 and 51.12.040.	192-12-043
192-12-018	Definitions relating to musicians—Conditions for exemption of musicians and entertainers under chapter 50.04 RCW (section 1, chapter 47, Laws of 1985). [Statutory Authority: RCW 50.12.010, 50.12.040, chapter 50.04 RCW and 1985 c 47 § 1. 85-22-045 (Order 7-85), § 192-12-018, filed 11/1/85.] Repealed by 99-23-100, filed 11/17/99, effective 12/18/99. Statutory Authority: Chapters 34.05 and 50.12 RCW.	192-12-050
192-12-019	Employer request for benefit charge relief. [Statutory Authority: RCW 50.12.010 and 50.12.040. 88-16-077 (Order 8-88), § 192-12-019, filed 8/2/88. Statutory Authority: Chapter 50.04 RCW, RCW 50.29.020, 50.12.010 and 50.12.040. 85-21-023 (Order 5-85), § 192-12-019, filed 10/10/85.] Repealed by 92-14-047,	192-12-060

Reports required of persons or entities for whom personal services are performed as provided by RCW 50.12.070 and 50.20.150. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-12-030, filed 10/28/94, effective 11/28/94. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-030, filed 8/14/78; Order 2602, § 192-12-030, filed 4/24/70; Regulation 3, filed 12/1/65, effective 1/1/66; Regulation 3, adopted 5/31/55, effective 7/3/55.] Repealed by 98-14-068, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 50.12.010 and 50.12.040.
 Registration of political subdivisions and instrumentalities thereof. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-035, filed 8/14/78.] Repealed by 99-20-118, filed 10/6/99, effective 11/6/99.
 Contributions by employers. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-040, filed 5/15/85; Order 2602, § 192-12-040, filed 4/24/70; Regulation 4, adopted 6/10/53, effective 6/20/53.] Repealed by 98-14-068, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 50.12.010 and 50.12.040.
 Application of payments. [Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-12-041, filed 8/6/80. Statutory Authority: RCW 50.12.010. 80-02-034 (Order 1-80), § 192-12-041, filed 1/10/80.] Repealed by 98-14-068, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 50.12.010 and 50.12.040.
 Reports and contributions subject to penalty. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-21-002 (Order 5-87), § 192-12-042, filed 10/8/87. Statutory Authority: RCW 50.12.010. 80-02-034 (Order 1-80), § 192-12-042, filed 1/10/80.] Repealed by 98-14-068, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 50.12.010 and 50.12.040.
 Definition of student for purpose of RCW 50.44.040(8). [Order 2-72, § 192-12-043, filed 7/6/72.] Repealed by 99-23-099, filed 11/17/99, effective 12/18/99. Statutory Authority: Chapters 34.05 and 50.04 RCW.
 Records. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-08-028, § 192-12-050, filed 3/29/90, effective 4/29/90. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-050, filed 8/14/78; Regulation 5, adopted 6/10/53, effective 6/20/53.] Repealed by 00-01-164, filed 12/21/99, effective 1/21/00. Statutory Authority: Chapters 34.05 and 50.12 RCW. Later promulgation, see WAC 192-310-050 and 192-310-055.
 Joint accounts. [Order 2602, § 192-12-060, filed 4/24/70; Regulation 6, adopted 6/10/53, effective 6/20/53.] Repealed by 99-20-128, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.24.170.

192-12-066	Tips as wages—Remuneration. [Statutory Authority: RCW 50.04.320, 50.12.010 and 50.12.040. 87-01-026 (Order 5-86), § 192-12-066, filed 12/11/86.] Repealed by 99-20-129, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320.		(Order 1-84), § 192-12-134, filed 1/4/84.] Repealed by 87-01-026 (Order 5-86), filed 12/11/86. Statutory Authority: RCW 50.04.320, 50.12.010 and 50.12.040.
192-12-070	Cash value of certain remunerations. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-070, filed 5/15/85. Statutory Authority: RCW 50.04.165, 50.04.320, 50.12.010 and 50.12.040. 81-23-010 (Order 4-81), § 192-12-070, filed 11/10/81. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-070, filed 8/14/78; Rule 1, filed 12/1/65, effective 1/1/66; Rule 1, adopted 11/21/49, effective 10 days after filing with secretary of state and publication.] Repealed by 99-20-130, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320.	192-12-140	Registration and claims for benefits. [Order 2-72, § 192-12-140, filed 7/6/72; Regulation 13, effective 5/15/58.] Repealed by Order 2-77, filed 9/2/77.
192-12-072	Predecessor-successor relationship defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 92-14-047, § 192-12-072, filed 6/24/92, effective 7/25/92; 85-11-038 (Order 1-85), § 192-12-072, filed 5/15/85.] Repealed by 00-05-068, filed 2/15/00, effective 3/17/00. Statutory Authority: RCW 50.12.010, 50.12.040.	192-12-141	Applying for unemployment benefits. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.20.140. 98-06-097, § 192-12-141, filed 3/4/98, effective 4/4/98. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.140 and 50.12.050. 95-18-107, § 192-12-141, filed 9/6/95, effective 10/7/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 93-10-025, § 192-12-141, filed 4/28/93, effective 5/29/93; 87-12-021 (Order 2-87), § 192-12-141, filed 5/28/87, effective 8/30/87; Order 2-75, § 192-12-141, filed 2/10/75.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-12-074	Predecessor-successor transfers through intermediaries. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-074, filed 5/15/85.] Repealed by 99-20-131, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.320 and 50.29.062.	192-12-150	Payment of benefits to partially unemployed persons and stand-by workers as provided by RCW 50.04.310, 50.20.010, and 50.20.130. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-12-150, filed 10/28/94, effective 11/28/94. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-150, filed 8/14/78; Regulation 14, adopted and effective 5/15/58.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-12-076	Delinquent predecessor contributions. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-076, filed 5/15/85.] Repealed by 00-01-165, filed 12/21/99, effective 1/21/00. Statutory Authority: Chapters 34.05, 50.12 RCW and portion of RCW 50.29.062. Later promulgation, see WAC 192-320-060.	192-12-157	Recovery of benefit payments. [Order 2-73, § 192-12-157, filed 11/15/73.] Repealed by 85-21-024 (Order 6-85), filed 10/10/85. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040.
192-12-080	Workers to procure Social Security account numbers. [Regulation 7, adopted 6/10/53, effective 6/20/53.] Repealed by 99-20-119, filed 10/6/99, effective 11/6/99.	192-12-158	Belltown Job Service Center services. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-03-006 (Order 1-87), § 192-12-158, filed 1/9/87.] Repealed by 93-20-037, filed 9/28/93, effective 10/29/93. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-12-090	Employer elections to cover individuals performing personal services in more than one state. [Order 2602, § 192-12-090, filed 4/24/70; Regulation 8, adopted 6/10/53, effective 6/20/53.] Repealed by 99-20-132, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.060.	192-12-180	Training defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 93-16-053, § 192-12-180, filed 7/29/93, effective 8/29/93. Statutory Authority: RCW 50.20.043, 50.12.010 and 50.12.040. 89-03-069 (Order 2-89), § 192-12-180, filed 1/18/89; Order 2-73, § 192-12-180, filed 11/15/73.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-12-100	Posting of notices by employers. [Regulation 9, adopted 6/10/53, effective 6/20/53.] Repealed by 99-20-133, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.20.140.	192-12-182	Training—Approval by commissioner. [Statutory Authority: RCW 50.12.010 and 50.12.040. 93-16-053, § 192-12-182, filed 7/29/93, effective 8/29/93. Statutory Authority: RCW 50.20.043, 50.12.010 and 50.12.040. 89-03-069 (Order 2-89), § 192-12-182, filed 1/18/89. Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-12-182, filed 8/6/80; Order 2-73, § 192-12-182, filed 11/15/73.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-12-110	Employing unit's liability for contributions due from contractors or subcontractors. [Order 2-73, § 192-12-110, filed 11/15/73; Regulation 10, adopted 6/10/53, effective 6/20/53.] Repealed by 99-20-120, filed 10/6/99, effective 11/6/99.	192-12-184	Training—Unemployment benefits while pursuing training. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-12-184, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 93-16-053, § 192-12-184, filed 7/29/93, effective 8/29/93; 80-10-052 (Order 4-80), § 192-12-184, filed 8/6/80; Order 2-73, § 192-12-184, filed 11/15/73.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-12-115	Bonding and deposit requirements, nonprofit organizations. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-23-002 (Order 6-87), § 192-12-115, filed 11/5/87. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-115, filed 8/14/78.] Repealed by 99-20-121, filed 10/6/99, effective 11/6/99.	192-12-190	Directive to attend job search workshop or training or retraining course according to RCW 50.20.044. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-12-190, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.20.044. 84-24-061 (Order 6-84), § 192-12-190, filed 12/5/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-12-120	Secrecy of information. [Order 2-73, § 192-12-120, filed 11/15/73; Regulation 11, adopted 6/10/53, effective 6/20/53.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.12.010.	192-12-300	Mailing addresses for notice to employer. [Statutory Authority: RCW 50.12.010 and 50.12.040. 96-16-018, § 192-12-300, filed 7/26/96, effective 8/26/96; 91-19-007, § 192-12-300, filed 9/6/91, effective 9/8/91; 89-20-064 (Order 4-89), § 192-12-300, filed 10/4/89, effective 10/9/89.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-12-130	Unemployment benefits for interstate claimants. [Statutory Authority: RCW 50.12.010, [50.12.]040, 50.20.010, [50.20.]140 and 50.12.050. 95-18-107, § 192-12-130, filed 9/6/95, effective 10/7/95; Rule 12, adopted 6/10/53, effective 6/20/53.] Repealed by 99-15-069, filed 7/19/99, effective 8/19/99. Statutory Authority: RCW 50.20.010 and 50.12.040.	192-12-305	Claimant responsibility for providing accurate employer address. [Statutory Authority: RCW 50.12.010 and
192-12-131	Pending of benefit claims—Notice. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-131, filed 1/4/84.] Repealed by 84-13-050 (Order 4-84), filed 6/18/84. Statutory Authority: RCW 50.12.010 and 50.12.040.		
192-12-132	Pending of benefit claims—Notice—Advice on rights. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-132, filed 1/4/84.] Repealed by 84-13-050 (Order 4-84), filed 6/18/84. Statutory Authority: RCW 50.12.010 and 50.12.040.		
192-12-134	Overpayments—Offsets—Right to hearing. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061		

- 50.12.040. 91-19-007, § 192-12-305, filed 9/6/91, effective 9/8/91; 89-20-064 (Order 4-89), § 192-12-305, filed 10/4/89, effective 10/9/89.] Repealed by 96-16-018, filed 7/26/96, effective 8/26/96. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-12-310 Notice to employer. [Statutory Authority: RCW 50.12.010 and 50.12.040. 91-19-007, § 192-12-310, filed 9/6/91, effective 9/8/91; 89-20-064 (Order 4-89), § 192-12-310, filed 10/4/89, effective 10/9/89.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
- 192-12-320 Mailing of determination notices under RCW 50.20.180. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-12-320, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 91-19-007, § 192-12-320, filed 9/6/91, effective 9/8/91; 89-20-064 (Order 4-89), § 192-12-320, filed 10/4/89, effective 10/9/89.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
- 192-12-330 Predetermination procedure—Separation issue. [Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-12-330, filed 4/5/99, effective 5/6/99; 91-19-007, § 192-12-330, filed 9/6/91, effective 9/8/91; 89-20-064 (Order 4-89), § 192-12-330, filed 10/4/89, effective 10/9/89.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
- 192-12-340 Discharges for misconduct for felony or gross misdemeanor—Responsibility for providing information. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-12-340, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 89-20-064 (Order 4-89), § 192-12-340, filed 10/4/89, effective 10/9/89.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
- 192-12-350 Interpretive regulation—Inclusion of farm labor contractor. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-08-028, § 192-12-350, filed 3/29/90, effective 4/29/90.] Repealed by 99-20-122, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05 and 50.12 RCW.
- 192-12-355 Interpretive regulation—Clarification of agricultural liability. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-08-028, § 192-12-355, filed 3/29/90, effective 4/29/90.] Repealed by 99-20-123, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05 and 50.12 RCW.
- 192-12-360 Interpretive regulation—Inclusion of immediate family members of partners. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-08-028, § 192-12-360, filed 3/29/90, effective 4/29/90.] Repealed by 99-20-127, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.150.
- 192-12-380 Definitions relating to RCW 50.04.140. [Statutory Authority: RCW 50.12.010 and 50.12.040. 91-24-056, § 192-12-380, filed 11/27/91, effective 1/1/92.] Repealed by 99-20-124, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05 and 50.12 RCW.
- 192-12-400 Employer request for benefit charge relief. [Statutory Authority: RCW 50.12.010 and 50.12.040. 92-14-047, § 192-12-400, filed 6/24/92, effective 7/25/92.] Repealed by 00-01-167, filed 12/21/99, effective 1/21/00. Statutory Authority: Chapter 34.05 RCW and RCW 50.20.020(2).
- 192-12-405 Conditions for relief of benefit charges. [Statutory Authority: RCW 50.12.010 and 50.12.040. 92-14-047, § 192-12-405, filed 6/24/92, effective 7/25/92.] Repealed by 00-05-069, filed 2/15/00, effective 3/17/00. Statutory Authority: RCW 50.12.010, 50.12.040.

WAC 192-12-142 Claims, appeals, petitions—Filing not to be refused. No employee or agent of the employment security department shall refuse to accept for filing any claim, appeal, or petition relating to any program administered by the department regardless of his or her personal evaluation of the efficacy of such action.

[Order 2-72, § 192-12-142, filed 7/6/72.]

[Title 192 WAC—p. 14]

WAC 192-12-151 Benefit payments—Not a determination of allowance. Benefit payments which are identified as "conditional payments" in the message portion of the mailer will not be deemed determinations of allowance under RCW 50.20.160(3).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-12-151, filed 6/18/84.]

WAC 192-12-153 Payment of benefits—Initial allowance—Employer appeal. A determination of allowance of benefits shall result in the prompt payment of any benefits due. The filing of an appeal by the employer shall not serve to stay the payment of benefits.

[Order 2-72, § 192-12-153, filed 7/6/72; General Order 2, § 192-12-153, filed 12/9/70.]

WAC 192-12-154 Payment of benefits by appeals tribunal—Claimant appeal. To the extent that any appeals decision allows benefits by reversing or modifying a local office determination such benefits shall be promptly paid. The filing of a petition for the commissioner's review shall not operate to stay the effect of the appeals tribunal decision.

[Order 2-72, § 192-12-154, filed 7/6/72; General Order 2, § 192-12-154, filed 12/9/70.]

WAC 192-12-155 Payment of benefits by commissioner—Petition to court. To the extent that any commissioner's decision allows benefits by reversing or modifying an appeal tribunal decision, such benefits shall be promptly paid. The filing of a petition for judicial review shall not operate to stay the effect of the commissioner's decision.

[Order 2-72, § 192-12-155, filed 7/6/72; General Order 2, § 192-12-155, filed 12/9/70.]

WAC 192-12-156 Overpayment of benefits—Credit to employers' account. Benefits paid pursuant to WAC 192-12-153 through 192-12-155 shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. Such ultimate reversal or modification shall not affect previous benefit charges based thereon; however, benefit credits in an amount equal to the erroneous charges shall be applied to the employers' account for the calendar year in which the decision is ultimately modified or reversed.

[Order 2-72, § 192-12-156, filed 7/6/72; General Order 2, § 192-12-156, filed 12/9/70.]

WAC 192-12-160 Withdrawals from trust fund. Section 62 of the act (RCW 50.16.030) provides: "Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner. * * *"

The commissioner accordingly prescribes: Moneys may be requisitioned from the unemployment trust fund from time to time when it shall be necessary for the payment of benefits upon requisitions signed by either the commissioner, the deputy commissioner, the supervisor of the unemployment compensation division or the treasurer of the unemployment com-

pensation fund. Requisitions signed by any of the foregoing persons shall be deemed to be requisitions of the commissioner.

[Regulation 17, filed 12/1/65, effective 1/1/66; Regulation 17, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-170 Unemployment compensation administration fund. Section 64 of the act (RCW 50.16.050) provides: "* * * The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of section 5501 of Remington's Revised Statutes, as amended, shall be applicable to this revolving fund* * *."

The commissioner accordingly prescribes: The treasurer shall deposit in, administer and disburse from the unemployment compensation administration fund in accordance with the terms of part IV (Fiscal management) of the Employment Security Manual, United States Department of Labor, Bureau of Employment Security, as it now is or as it may hereafter be amended.

[Regulation 18, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-173 Federal programs—Maintenance of regulations and guidelines. The employment security department shall maintain a compilation of the federal law, regulations and guidelines governing the operations of federal programs administered by this agency. The compilation will be available at each local office and at the central office in Olympia. Each office shall have at least one person available to assist individuals seeking information on such programs.

[Order 2-72, § 192-12-173, filed 7/6/72.]

WAC 192-12-186 Training—Commissioner approval or denial of training. The decision of the commissioner to approve or disapprove an application for training shall be in writing and shall set forth the reasons therefor. Decisions of the commissioner pursuant to these regulations shall be served upon all interested parties and shall be subject to appeal and review as provided under RCW 50.32.020, 50.32.070, and these regulations.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 93-16-053, § 192-12-186, filed 7/29/93, effective 8/29/93; Order 2-73, § 192-12-186, filed 11/15/73.]

WAC 192-12-365 Interpretive regulation—Definition of suitable work as it applies to agricultural labor. RCW 50.20.100 requires that:

". . . for individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets the conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual."

(2005 Ed.)

For the purposes of determining the suitability of agricultural labor, the commissioner may consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's skill level, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors that are pertinent to the individual's capacity to perform the work.

As it applies to suitable work, the department will use the definition of agricultural labor in RCW 50.04.150.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 90-08-028, § 192-12-365, filed 3/29/90, effective 4/29/90.]

Chapter 192-15 WAC

PUBLIC DISCLOSURE AND PRIVACY OF INFORMATION

WAC

192-15-010	Purpose.
192-15-020	Definitions.
192-15-030	Description of central and field organization of employment security department.
192-15-040	Procedures for obtaining public records—Designation of departmental employees responsible for public records.
192-15-050	Commissioner's review of denials of public records requests.
192-15-060	Access to individual or employing unit records or information by government agencies—RCW 50.13.060.
192-15-070	Response to subpoenas—RCW 50.13.070.
192-15-080	Access to public records for operation and management purposes—RCW 50.13.080.
192-15-090	Consent to release of records or information—RCW 50.13.100.
192-15-100	Disclosure related to employment security programs.
192-15-110	Public records available.
192-15-120	Office hours.
192-15-130	Copying.
192-15-140	Protection of public records.
192-15-150	Records index—Available material.
192-15-160	Responsible addressee.
192-15-170	Forms.

WAC 192-15-010 Purpose. The purpose of this chapter is to insure compliance by the employment security department with the provisions of RCW 42.17.250 through 42.17.320 concerning disclosure of public records, and to interpret and implement the provisions of chapter 50.13 RCW concerning the privacy and confidentiality of information or records held by the employment security department.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-010, filed 8/14/78.]

WAC 192-15-020 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-020, filed 8/14/78.]

WAC 192-15-030 Description of central and field organization of employment security department. (1) The employment security department is a public service agency. The administrative office of the employment security department and its staff are located at 212 Maple Park, Olympia, Washington 98504.

(2) The employment security department is headed by a commissioner appointed by the governor. Under the commis-

sioner are an executive assistant, three deputy commissioners, and a limited number of special staff that report directly to him. There are also assistant attorneys general assigned to the department who provide legal services in all agency matters.

(a) Under the executive assistant to the commissioner are the public information office, the veterans services office, the legislative liaison, and the labor liaison.

(b) Under the deputy commissioner for field services are the personnel section, the reviewing officers, the monitor advocate, and the community organizations liaison.

(c) Under the deputy commissioner for resources and programs are employment and training (CETA), staff development, employment services, and unemployment insurance.

(d) Under the deputy commissioner for support services are the office of management and budget and the office of general administration.

(3) Job service centers and tax offices are located throughout the state and are headed by a manager.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-030, filed 8/14/78.]

WAC 192-15-040 Procedures for obtaining public records—Designation of departmental employees responsible for public records. (1) The public records of the employment security department shall be in the custody of the administrator, office of general administration, who will be responsible for implementing departmental regulations regarding the release of public records and for insuring compliance by departmental employees with chapters 50.13 and 42.17 RCW and chapter 192-15 WAC.

(2) The department shall appoint a responsible employee or employees in each job service center and tax office to handle requests for public records. In the central office, the records officer, and such agents as he appoints, shall handle such requests.

(a) The responsible departmental employees shall familiarize themselves with chapters 50.13 and 42.17 RCW, and chapter 192-15 WAC.

(b) All identifiable requests for public records shall be referred to these employees, except in cases of subpoenas which shall be handled as specified by WAC 192-15-070.

(3) Requests for public records may be made orally, except in the case of governmental agency requests for individual or employing unit records under RCW 50.13.060 which shall be handled as specified by WAC 192-15-060.

(a) If the responsible departmental employee is reasonably satisfied that the public record may be released under the provisions of chapters 42.17 and 50.13 RCW and these regulations, he may release it or provide access to the individual requesting it. If the employee is not satisfied that the requested information should be released, he shall refuse access to the public record.

(b) The departmental employee may consult with the department's records officer, or his agents, and/or any assistant attorney general for the department if he is unsure whether the public record should be released.

(4) Anyone refused access to public records held by the department who feels this refusal was improper may complete a request for public records form provided by the department at one of its offices.

(a) This form shall be published by the department's records officer and shall include a space for description of the records requested and for specification of reasons why the refusal of access was improper.

(b) The responsible departmental employee shall send the completed form to the department's records officer for consideration of the refusal.

(i) If the records officer, or his agents, decides that the public records may be disclosed under chapters 50.13 and 42.17 RCW and these regulations, he shall send the requested records to the appropriate departmental office or advise the date and place where the records will be available.

(ii) If the records officer, or his agents, decides that the public record cannot be disclosed or can only be partly disclosed under chapters 50.13 or 42.17 RCW and these regulations, he shall prepare a statement briefly explaining the reason that the record cannot be disclosed, including a statement of the specific statute prohibiting disclosure and an explanation of how the statute applies to the withheld record. This statement shall be forwarded to the proper job service center or tax office or to the person or agency requesting the records.

(iii) The records officer, or his agents, shall act as promptly as circumstances allow.

(5) In the event that the responsible departmental employee refuses access to records or information requested pursuant to RCW 50.13.050(1), the request form shall be sent to the appeal tribunal for handling by the examiner who is to hear the case in question. The examiner shall authorize the disclosure of the information or records if he deems them material to the proceeding. If the examiner does not deem the information or records material, he shall notify the interested party that they will not be disclosed and include an explanation of his action in his decision in the proceeding. After the decision of the appeal examiner and within the time limit provided in RCW 50.32.070, the interested party may petition the commissioner for a new hearing or the reopening of a hearing if the refusal to disclose was improper and prejudiced the presentation of the party's case. This procedure for review by the commissioner shall be in lieu of the procedure provided in WAC 192-15-050.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-040, filed 8/14/78.]

WAC 192-15-050 Commissioner's review of denials of public records requests. (1) Any person who objects to the written denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the records officer, or other staff member denying the request. The written request shall specifically refer to the written statement by the records officer, or other staff member, which constituted or accompanied the written denial.

(2005 Ed.)

(2) Immediately after receiving a written request for review of a decision denying a public record, the records officer, or other staff member denying the request, shall refer it to the commissioner of the employment security department. The commissioner shall immediately consider the matter and either affirm or reverse such written denial. In any case, the request shall be returned with a final decision, within two business days following the original written denial.

(3) Administrative remedies shall not be considered exhausted until the employment security department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-050, filed 8/14/78.]

WAC 192-15-060 Access to individual or employing unit records or information by government agencies—RCW 50.13.060. (1) Applications by government agencies for information or records deemed private and confidential by chapter 50.13 RCW shall be made to the responsible departmental employees specified in WAC 192-15-040. The applications shall be in writing on forms provided by the department.

(a) If the departmental employee is reasonably satisfied that the application meets the requirements of RCW 50.13.060, the government agency may have access to the information or records.

(b) If the departmental employee is not reasonably satisfied that the application meets the requirements of RCW 50.13.060 and refuses access, the agency may attach its application to the form specified by WAC 192-15-040(4) and obtain review of the refusal in the manner outlined in WAC 192-15-040 and 192-15-050.

(2) In the event of a refusal by a responsible departmental employee to release records or information under RCW 50.13.060(3), the government agency can immediately contact the commissioner for appeal.

(3) RCW 50.13.060(5) shall be interpreted to permit establishment of routine procedures for detection of fraud by claimants under the various social programs administered by government agencies. This statute permits access only to information needed to identify individuals improperly claiming under different programs. Further investigation of employment security department files concerning these individuals may be accomplished only if the normal requirements of RCW 50.13.060 are met.

(4) The term "other official of the agency" as used in RCW 50.13.060 (1)(b) means an employee who has substantial responsibility for the operation of the requesting agency or for one or more of its programs or administrative units.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-060, filed 8/14/78.]

WAC 192-15-070 Response to subpoenas—RCW 50.13.070. An employee called to testify in a judicial or administrative proceeding shall not disclose information or records deemed private and confidential under chapter 50.13 RCW, unless the presiding officer makes a finding that the need for the disclosure outweighs any reasons for the privacy

[Title 192 WAC—p. 17]

and confidentiality of the records or information, or unless the employee is responding to a subpoena containing such a finding.

An employee receiving a subpoena should notify one of the responsible departmental employees who has been designated to handle requests for public records pursuant to WAC 192-15-040. This latter employee should make arrangements for the appropriate response to the subpoena, including attendance of the proper employee before the tribunal. The departmental employee may contact the records officer for guidance.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-070, filed 8/14/78.]

WAC 192-15-080 Access to public records for operation and management purposes—RCW 50.13.080. RCW 50.13.080 shall be interpreted to permit incidental access to private or confidential information and records by private parties who are assisting the department in such areas as data processing and collection of employment security contributions. These parties are bound by the rules of confidentiality and privacy applicable to departmental employees and their activities will be monitored by the department to insure that private and confidential information or records are being handled correctly.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-080, filed 8/14/78.]

WAC 192-15-090 Consent to release of records or information—RCW 50.13.100. RCW 50.13.100, concerning consent to release of information or records deemed private and confidential, shall be liberally interpreted so that the department may release information or records to third parties who have been able to supply the department with reasonable written or oral assurances of their identity and that they are acting with the approval of the individual or employing unit whose records are involved. In cases where a certain record contains information about more than one individual or employing unit, all individuals or employing units concerned must give their consent before a record may be released or disclosed to other than the individuals or employing units.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-090, filed 8/14/78.]

WAC 192-15-100 Disclosure related to employment security programs. Chapter 50.13 RCW shall not be interpreted to prevent the employment security department from:

- (1) Disclosing information in carrying out the department's duties under Title 50 RCW or under any other program for which the department is responsible; or
- (2) Disclosing information to the employment security agencies of other states when such disclosure relates to the administration of the employment security law of the requesting state; or
- (3) Disclosing information to the Internal Revenue Service when such disclosure relates to the Federal Unemployment Tax Act.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 195-15-100 (codified as WAC 192-15-100), filed 8/14/78.]

WAC 192-15-110 Public records available. All public records of the employment security department, as defined in WAC 192-15-020 shall be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-110, filed 8/14/78.]

WAC 192-15-120 Office hours. Public records shall be available for inspection and copying during the customary office hours of the employment security department. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-120, filed 8/14/78.]

WAC 192-15-130 Copying. No fee shall be charged for the inspection of public records. The employment security department shall charge an established amount per page of copy for providing copies of public records and for use of the employment security department copy equipment. This charge is the amount necessary to reimburse the employment security department for its actual costs incident to such copying.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-130, filed 8/14/78.]

WAC 192-15-140 Protection of public records. When a public record is turned over for inspection or copying, a place will be provided so that adequate surveillance may be made to prevent damage, disorganization, and loss of such records. At no time shall the original record be transported from one area to another without a member of the agency staff being present.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-140, filed 8/14/78.]

WAC 192-15-150 Records index—Available material. The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of records as specified in RCW 42.17.260(2), because of the complexity and diversity of its operations and the resulting volume of correspondence[,], reports, survey, staff studies and other materials. The department will make available for public inspection and copying all indexes which may at a future time be developed for agency use.

The following records shall be available for inspection and copying through the office of the public records officer and, in addition, those marked with an asterisk (*) shall be available for inspection through the department's local employment centers.

- (1) Laws relating to employment security.*
- (2) Employment security department rules* Title 192 WAC.
- (3) Digest commissioner's decisions.*
- (4) Unemployment insurance tax administration audit manual.
- (5) Tax branch policy manual.
- (6) Benefit policy guide.*
- (7) Unemployment insurance procedures manual.

(8) Inventory of equipment.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-15-150, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-15-150, filed 6/12/80. Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-150, filed 8/14/78.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 192-15-160 Responsible addressee. All communications with the employment security department including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 and these rules; requests for copies of the employment security department's decisions and other matters, shall be addressed as follows: Employment Security Department, Attention: Administrator, Office of General Administration, Olympia, Washington 98504.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-160, filed 8/14/78.]

WAC 192-15-170 Forms. The employment security department will provide forms for use by all persons requesting inspection and/or copying or copies of its records.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-170, filed 8/14/78.]

Chapter 192-16 WAC

INTERPRETATIVE REGULATIONS OF THE COMMISSIONER OF THE EMPLOYMENT SECURITY DEPARTMENT

WAC

192-16-004	Interpretive regulation—Benefit year—Further defining initial separation from employment—RCW 50.04.030.		50.12.040 and 50.20.010. 95-09-085, § 192-16-017, filed 4/19/95, effective 5/20/95; Order 2-77, § 192-16-017, filed 9/2/77.] Repealed by 01-11-085, filed 5/16/01, effective 6/16/01. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10).
192-16-005	Interpretive regulations—Applications for initial determinations—Backdating—RCW 50.04.030.	192-16-019	Interpretive regulations—Effective date of RCW 50.20.065—Discharges for felony or gross misdemeanor. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-16-019, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-019, filed 8/17/82; Order 2-77, § 192-16-019, filed 9/2/77.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-16-009	Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.050(1).		
192-16-015	Leaving work for marital or domestic reasons—RCW 50.20.050 (1)(d).		
192-16-016	Satisfying disqualification under RCW 50.20.050 (1)(d) when separation is for reasons of marital status and marriage occurs after date of separation.		
192-16-025	Lump sum retirement payment.		
192-16-030	Interpretive regulation—Computation of pension deductions under RCW 50.04.323.	192-16-021	Interpretive regulations—Suitable work factors—RCW 50.20.100. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-16-021, filed 4/19/95, effective 5/20/95; Order 2-77, § 192-16-021, filed 9/2/77.] Repealed by 02-08-072, filed 4/2/02, effective 5/3/02. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010.
192-16-050	Diversion of unemployment benefits to satisfy child support obligations.		
192-16-055	Interpretive regulations—Special coverage provisions—Bona fide notification of intent for substitute teacher—RCW 50.44.050(1).	192-16-023	Interpretive regulations—Disqualification of students—RCW 50.20.095. [Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-023, filed 8/6/80; Order 2-77, § 192-16-023, filed 9/2/77.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

192-16-001	Interpretive regulations—Employer reports—Effect of omitting information—Limitation. [Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-16-001, filed 8/14/78; Order 2-77, § 192-16-001, filed 9/2/77; Order 4-75, § 192-16-001, filed 8/29/75, effective 10/6/75.] Repealed by 99-20-134, filed 10/6/99, effective 11/6/99. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 49.46.020.	192-16-024	Definition of a "public agency"—RCW 50.04.320 (4)(c). [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.12.070. 96-11-002, § 192-16-024, filed 5/2/96, effective 6/2/96.] Repealed by 98-19-120, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 50.12.010.
192-16-002	Employer reports—Further defining hours worked—RCW 50.12.070. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.12.070. 96-11-002, § 192-16-002, filed 5/2/96, effective 7/1/96. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-16-002, filed 8/14/78; Order 2-77, § 192-16-002, filed 9/2/77.] Repealed by 99-23-098, filed 11/17/99, effective 12/18/99. Statutory Authority: Chapters 34.05 and 50.12 RCW.	192-16-033	Interpretive regulation—Regular shareable benefits defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 81-13-016 (Order 2-81), § 192-16-033, filed 6/11/81.] Repealed by 03-06-038, filed 2/26/03, effective 3/29/03. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-16-003	Interpretive regulations—Effect of repeal of RCW 50.20.030—Pregnancy disqualification. [Order 4-75, § 192-16-003, filed 8/29/75, effective 10/6/75.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.12.010.	192-16-036	Interpretive regulation—Requalification for regular shareable, extended, or additional benefits under RCW 50.20.050(4). [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-16-036, filed 10/28/94, effective 11/28/94; 82-17-052 (Order 6-82), § 192-16-036, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-036, filed 6/11/81.] Repealed by 03-06-038, filed 2/26/03, effective 3/29/03. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-16-007	Interpretive regulations—Disqualification for leaving work voluntarily—Effective date of RCW 50.20.050. [Order 2-77, § 192-16-007, filed 9/2/77.] Repealed by 95-09-085, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010.	192-16-040	Interpretive regulation—Good prospects of obtaining work within a reasonably short period of time under RCW 50.22.020(3)—Shareable, extended, or additional benefits. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-16-040, filed 10/28/94, effective 11/28/94; 82-17-052 (Order 6-82), § 192-16-040, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-040, filed 6/11/81.] Repealed by 03-06-038, filed 2/26/03, effective 3/29/03. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-16-011	Interpretive regulations—Leaving work to accept bona fide job offer—RCW 50.20.050 (2)(a). [Order 2-77, § 192-16-011, filed 9/2/77.] Repealed by 01-11-085, filed 5/16/01, effective 6/16/01. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10).	192-16-042	Interpretive regulation—Failure to apply for or accept work under RCW 50.22.020 (4)(b)—Shareable, extended, or additional benefits. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-16-042, filed 10/28/94, effective 11/28/94; 82-17-052 (Order 6-82), § 192-16-042, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-042, filed 6/11/81.] Repealed by 03-06-038, filed 2/26/03, effective 3/29/03. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-16-013	Interpretive regulations—Leaving work because of illness or disability of self or immediate family member—RCW 50.20.050 (2)(b). [Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-013, filed 8/6/80; Order 2-77, § 192-16-013, filed 9/2/77.] Repealed by 02-14-035, filed 6/25/02, effective 7/26/02. Statutory Authority: RCW 50.12.010 and 50.12.040.		
192-16-017	Interpretive regulations—Satisfying disqualifications under RCW 50.20.050 (1) and (4), 50.20.060 and 50.20.080. [Statutory Authority: RCW 50.12.010,		

- 192-16-045 Interpretive regulation—Disqualification for failing to accept an offer of or to apply for suitable work—Shareable, extended, or additional benefits. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-16-045, filed 10/28/94, effective 11/28/94; 82-17-052 (Order 6-82), § 192-16-045, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-045, filed 6/11/81.] Repealed by 03-06-038, filed 2/26/03, effective 3/29/03. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-16-047 Interpretive regulation—Interpretation of requirements of RCW 50.22.020(5)—Tangible evidence of a systematic and sustained effort to obtain work—Shareable, extended, or additional benefits. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-16-047, filed 10/28/94, effective 11/28/94; 82-17-052 (Order 6-82), § 192-16-047, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-047, filed 6/11/81.] Repealed by 03-06-038, filed 2/26/03, effective 3/29/03. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-16-051 Special coverage provisions for educational employees—Definitions—RCW 50.44.050(1). [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.12.070. 96-11-002, § 192-16-051, filed 5/2/96, effective 6/2/96. Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-051, filed 8/17/82.] Repealed by 99-18-066, filed 8/31/99, effective 10/1/99. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010.
- 192-16-052 Objective criteria used to define "academic year"—RCW 50.44.050(5). [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.12.070. 96-11-002, § 192-16-052, filed 5/2/96, effective 6/2/96.] Repealed by 99-18-066, filed 8/31/99, effective 10/1/99. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010.
- 192-16-057 Interpretive regulation—"Under the same terms and conditions of employment" defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 88-10-020 (Order 3-88), § 192-16-057, filed 4/29/88.] Repealed by 99-18-066, filed 8/31/99, effective 10/1/99. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010.
- 192-16-061 Interpretive regulation—Permanent residence in the United States under color of law—RCW 50.20.098. [Statutory Authority: RCW 50.12.010 and 50.12.040. 88-05-034 (Order 1-88), § 192-16-061, filed 2/12/88.] Repealed by 01-03-009, filed 1/5/01, effective 2/5/01. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-16-065 Interpretive regulations—Effective date of chapter 83, Laws of 1988. [Statutory Authority: RCW 50.12.010 and 50.12.040. 88-10-020 (Order 3-88), § 192-16-065, filed 4/29/88.] Repealed by 95-09-085, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010.
- 192-16-070 Interpretive regulations—Voluntary quit—RCW 50.20.050. [Statutory Authority: RCW 50.12.010 and 50.12.040. 93-18-054, § 192-16-070, filed 8/30/93, effective 9/30/93.] Repealed by 01-12-009, filed 5/24/01, effective 6/24/01. Statutory Authority: RCW 50.12.010, 50.12.040.

WAC 192-16-004 Interpretive regulation—Benefit year—Further defining initial separation from employment—RCW 50.04.030. RCW 50.04.030 requires in part, "That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the initial separation from employment in the previous benefit year of not less than six times the weekly benefit amount." For the purposes of RCW 50.04.030,

(1) "Initial separation from employment in the previous benefit year" means the last separation from employment before the application for initial determination.

(2) "Employment" means employment covered by Title 50 RCW.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-104, § 192-16-004, filed 8/21/90, effective 8/21/90.]

(2005 Ed.)

WAC 192-16-005 Interpretative regulations—Applications for initial determinations—Backdating—RCW 50.04.030. (1) General rule. A benefit year begins no earlier than the first day of the calendar week in which the individual files an application for an initial determination. However, at the convenience of the department or for good cause shown, the application for initial determination may be backdated.

(2) Definitions. As used in this section:

(a) "For the convenience of the department" is intended to embrace those situations in which the backdating of an initial application is required by circumstances which render impracticable or impossible the acceptance of an initial application during a week in which it would normally be filed. Such factors could be but are not limited to special handling prescribed by practicabilities of service, equipment breakdown, departmental employee-management disputes and lack of available personnel to accept applications.

(b) "Good cause" means factors peculiar to the claimant. "Good cause" in this context means factors which would effectively prevent a reasonable person facing similar circumstances from filing an initial application. Such circumstances include but are not limited to acting or failing to act based on authoritative advice directly from departmental personnel upon which a reasonable person would normally rely, severe weather conditions precluding safe travel to the point of filing, incapacity due to illness or injury and other factors of similar gravity.

(3) Limitations as to good cause.

(a) Good cause will not be found for backdating an application if an individual does not file the request for backdating during the first week in which factors constituting "good cause" for failure to file were not present.

(b) In backdating an application for good cause, the effective date will not be prior to the first week in which the conditions existed that precluded the individual from filing the application.

(c) Backdating of initial applications will not be allowed if the claimant alleges "good cause" based on erroneous advice or information from departmental personnel if he or she could be reasonably expected to question the accuracy of the information and knew or should have known of redetermination or appeal rights which he or she failed to exercise in a timely manner.

[Order 2-77, § 192-16-005, filed 9/2/77.]

WAC 192-16-009 Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.050(1). (1) General rule. Except as provided in WAC 192-150-050 and 192-150-055, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

(a) That he or she left work primarily because of a work connected factor(s); and

(b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and

(c) That he or she first exhausted all reasonable alternatives prior to termination: Provided, that the individual asserting "good cause" may establish in certain instances that

pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(2) **Exceptions.** Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of hire nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual demonstrates to the satisfaction of the department:

(a) That the distance from the individual's residence at time of hire is substantially greater than the distance customarily traveled by workers in the individual's job classification and labor market; or,

(b) That the related work connected circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor; or

(c) That other work related circumstances would work an unreasonable hardship on the individual if he or she were required to continue in the employment.

(3) **Definitions.** For purposes of subsection (2) above:

(a) "Distance customarily traveled" means a distance normally traveled by a significant portion of the work force in the individual's job classification in the labor market area;

(b) "Generally known" means commonly known without reference to specific cases or individuals; and

(c) "Individual's job classification" means the job classification in which the individual was working when the individual voluntarily left work; and

(d) A "labor market" is the geographic area in which those workers in the individual's job classification, living in the vicinity of his or her residence, customarily work; and

(e) "Substantial involuntary deterioration" means an actual and considerable worsening of the work factor outside the control of the individual; and

(f) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to leave that employment.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-16-009, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-009, filed 8/17/82; 80-10-052 (Order 4-80), § 192-16-009, filed 8/6/80; Order 2-77, § 192-16-009, filed 9/2/77.]

WAC 192-16-015 Leaving work for marital or domestic reasons—RCW 50.20.050 (1)(d). This regulation applies only to claims with an effective date prior to January 4, 2004.

(1) General rule. An individual whose marital status or domestic responsibilities are the primary cause of his or her voluntarily leaving employment shall be disqualified from benefits pursuant to the terms of RCW 50.20.050 (1)(d). This rule applies whether or not the individual took reasonable precautions to preserve his or her employment. Domestic responsibilities mean obligations or duties relating to the individual's immediate family, and include the illness, disability, or death of a member of the claimant's "immediate family" as defined in WAC 192-150-055.

(2) Exception. Notwithstanding the provisions of subsection (1) above, an individual who leaves employment because of the illness, disability, or death of a member of his

or her immediate family as defined in WAC 192-150-055 and who establishes good cause under RCW 50.20.050 (1)(b)(ii), will not be subject to disqualification under RCW 50.20.050 (1)(d): Provided, That if such individual fails to establish good cause under RCW 50.20.050 (1)(b)(ii), disqualification will be imposed under RCW 50.20.050 (1)(d) rather than under RCW 50.20.050(1).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-16-015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-015, filed 8/6/80; Order 2-77, § 192-16-015, filed 9/2/77.]

WAC 192-16-016 Satisfying disqualification under RCW 50.20.050 (1)(d) when separation is for reasons of marital status and marriage occurs after date of separation. This regulation applies only to claims with an effective date prior to January 4, 2004.

In *Yamauchi v. Department of Employment Security*, 96 Wn.2d 773 (1982), the Washington state supreme court held that an individual who leaves work to be married and relocate to a place outside of reasonable commuting distance and who is not married at the time of the leaving does so for reasons of marital status and should be disqualified from benefits pursuant to RCW 50.20.050 (1)(d) if there is a causal nexus between the marital status and leaving work. However, the court also ruled that an individual who so leaves work shall not benefit from the lesser disqualification of RCW 50.20.050 (1)(d) prior to the date of the marriage and move.

(1) An individual who voluntarily leaves work to marry and relocate to a place outside of reasonable commuting distance has left work for reasons of marital status pursuant to RCW 50.20.050 (1)(d) if there is a causal nexus between the marriage and leaving work.

(2) Any individual who leaves work for reasons of marital status as described in subsection (1) above shall be granted no credit toward satisfying the disqualification of benefits under RCW 50.20.050 (1)(d) described as the alternate method of satisfying the disqualification in WAC 192-150-090, for any week ending prior to marriage or relocation, whichever is the latter.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-16-016, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-016, filed 8/17/82.]

WAC 192-16-025 Lump sum retirement payment.

(1) Lump sum payments as described in RCW 50.04.323(3) will be prorated over the life expectancy of the individual in accordance with Table I in Regulation 1.72-9 of the Internal Revenue Code as amended as of the effective date of the individual's benefit year, and the prorated amount deducted from benefits.

(2) The withdrawal, upon separation from employment, of only the funds, and interest thereon, contributed to a retirement pension by an individual will not serve to reduce benefits.

(3) When an individual receives a lump sum retirement payment and transfers it within sixty days to another long-term retirement plan, such as an Individual Retirement Account (IRA), the portion reinvested is not deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-16-025, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-025, filed 8/6/80.]

WAC 192-16-030 Interpretive regulation—Computation of pension deductions under RCW 50.04.323. RCW 50.04.323 provides, in part, that the amount of any reduction under that section shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, in accordance with regulations prescribed by the commissioner. There will be presumed to have been no employee contribution unless the claimant provides evidence satisfactory to the department that such a contribution was made.

In the absence of a written certification from the administrators of the plan under which the claimant is receiving the pension, retirement or retired pay, annuity, or other similar periodic payment which verifies the specific percentage of the individual's contributions to the plan, the deductible pension amount will be calculated in the manner set forth in the following paragraph.

The deductible pension amount shall be determined as of the last pay period in the individual's base year for which contributions were made. For example, during such period the employees contributed 6% of gross wages and the employer contributed 7% of gross wages. The total contributions is 13% of gross wages. Dividing the employer's contributions by the total results in an employer share of contributions of 54%. The employer share represents that portion of the gross monthly pension that is deductible.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 81-13-016 (Order 2-81), § 192-16-030, filed 6/11/81.]

WAC 192-16-050 Diversion of unemployment benefits to satisfy child support obligations. RCW 50.40.050 requires the department, upon proper notification by a child support agency, to withhold a portion of an individual's unemployment insurance benefits to be transmitted to the child support agency to satisfy child support obligations.

(1) Notification to claimant. The child support agency will serve notice on the claimant of the order to withhold unemployment insurance benefits.

(2) Overpayments. In the event an individual receives benefits to which he or she is not entitled, and those benefits are recoverable under the provisions of RCW 50.20.190, the overpayment will include the amount withheld and transmitted to the child support agency. The withheld benefits for child support obligations are considered to have been paid to the individual and then paid by the individual to the child support agency.

(3) Erroneous withholding. If an amount greater than the amount which should have been deducted from benefits is paid to the child support agency, that agency shall be responsible for reimbursing the individual claimant for any amount in excess of the amount properly received. If an amount less than the amount which should have been paid to the child support agency is withheld and paid, subsequent benefit entitlement of the claimant will be applied to satisfy the amount underpaid to the child support agency.

(4) Appeal rights.

(a) Any appeal regarding the validity of the child support obligation upon which the order to withhold is based including whether the obligation is owed, the total amount of obligation, and the amount to be withheld from benefits and paid over to the child support agency shall be resolved between the claimant and the child support agency. The employment security department will not be responsible for any appeals regarding such matters.

(b) Any appeal regarding the validity of the employment security department's authority to make deductions, the applicable weeks for which the deduction was made, and the accuracy of the amount deducted may be appealed in the same manner in which nonmonetary benefit determinations are appealed. The department's notification to the claimant shall contain an appeals notice. The laws and regulations relating to benefit appeals shall apply to appeals regarding matters subject to this regulation.

(5) Effective date of withholding. No amount shall be withheld from unemployment benefits paid for weeks prior to the date the notice to withhold is served on the individual, or prior to the date when an agreement to withhold is reached between the individual and the child support agency.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-16-050, filed 4/19/95, effective 5/20/95. Statutory Authority: Chapter 50.40 RCW and 1982 1st ex.s. c 18. 82-13-057 (Order 3-82), § 192-16-050, filed 6/14/82.]

WAC 192-16-055 Interpretive regulations—Special coverage provisions—Bona fide notification of intent for substitute teacher—RCW 50.44.050(1). In determining whether a notification of intent for a substitute teacher is bona fide, consideration shall be given, but not necessarily limited to the following factors:

(1) With respect to the preceding academic year(s) or term(s):

- (a) Number of full-time teaching positions,
- (b) Student enrollment,
- (c) Number of schools,

(d) Size of substitute list at beginning, during, and end of academic year(s) or term(s),

(e) Priorities affecting the assignment of substitute teachers,

(f) Average number of substitute teachers assigned each day.

(2) With respect to the ensuing academic year or term:

- (a) Projected number of full-time teaching positions,
- (b) Projected student enrollment,
- (c) Projected number of schools,

(d) Projected size of substitute list at beginning, during, and end of academic year(s) or term(s),

(e) Priorities affecting the assignment of substitute teachers,

(f) Projected average number of substitute teachers assigned each day.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-055, filed 8/17/82.]

Chapter 192-17 WAC

STATE ENVIRONMENTAL POLICY ACT—INTERPRETATION

WAC
192-17-010 Exemption from provisions of WAC 197-10-800.

WAC 192-17-010 Exemption from provisions of WAC 197-10-800. The employment security department of the state of Washington has reviewed its authorized activities and found all of them to be exempt from the provisions of Title 197 WAC. This statement is provided as compliance with the requirements that the employment security department adopt guidelines consistent with Title 197 WAC.

[Order 1-76, § 192-17-010, filed 4/12/76.]

Chapter 192-23 WAC

BENEFIT PAYMENT REGULATIONS

WAC

192-23-001	Failure to respond to request for information results in a presumption of disqualifying information.
192-23-011	Failure to provide details of employment.
192-23-012	Failure to provide details on holiday and/or vacation pay.
192-23-051	Failure to provide details on separation from employment.
192-23-052	Failure to respond to a request for information regarding voluntary quit.
192-23-081	Failure to provide details on a refusal of an offer of work.
192-23-082	Failure to respond to a request for information regarding failure to apply for work.
192-23-091	Failure to respond to a request for information regarding labor dispute.
192-23-113	Failure to respond to a request to provide information regarding athletic employment.
192-23-301	Failure to respond to a request for information regarding reasonable assurance of return to work.
192-23-320	Failure to respond to a request for documentation of a systematic and sustained work search.
192-23-350	Failure to respond to a request for pension information.
192-23-900	Claimant liable for repayment of overpayments caused by conditional payment.

192-23-019	Directive to report for reemployment services. [Statutory Authority: RCW 50.12.010 and 50.12.040. 95-12-014, § 192-23-019, filed 5/30/95, effective 6/30/95.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-061	Failure to respond to a request for information regarding a discharge from work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-061, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-096	Failure to provide information regarding attendance at school. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-096, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-800	Certification of ineligibility. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-800, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-800, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-810	Certification of return to full-time work or report of hours worked consistent with full-time work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-810, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-810, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-23-002	Failure to respond defined. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-002, filed 6/18/84.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-23-013	Failure to report in person. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-013, filed 6/18/84.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.
192-23-014	Failure to establish ability to or availability for work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-014, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-014, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-015	Failure to establish active search for work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-015, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-016	Failure to meet work search requirements. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-016, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-016, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-017	Failure to respond to a request for information regarding late filing of claims. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-017, filed 6/18/84.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-23-018	Failure to report as directed to reopen a claim for benefits after a break in claim series. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.20.140. 98-06-097, § 192-23-018, filed 3/4/98, effective 4/4/98. Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-018, filed 5/28/87, effective 8/30/87.] Repealed by 99-08-073, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.20.010 and 50.12.040.

WAC 192-23-001 Failure to respond to request for information results in a presumption of disqualifying information. If a claimant provides potentially disqualifying information or fails to provide necessary information and then fails to respond to a request for specific information, the failure to respond will result in a presumption of disqualifying information and the issuance of a formal determination of disqualification. The presumption of disqualifying information is rebuttable. RCW 50.20.160 provides the department the authority to issue redeterminations. If a claimant successfully rebuts the presumption of disqualifying information, provides information sufficient to establish eligibility, and a redetermination is permitted by RCW 50.20.160, a redetermination will be issued allowing benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-001, filed 6/18/84.]

WAC 192-23-011 Failure to provide details of employment. (1) If a claimant reports that he or she had work or earnings for one or more weeks, and fails to provide employer name and address information and fails to respond to a request for employer name and address information, the claimant will be presumed to be not unemployed as defined in RCW 50.04.310 and therefore not eligible for benefits pursuant to RCW 50.20.010.

(2) If a claimant reports that he or she has received or will receive remuneration for a week(s) not yet claimed and subsequently claims benefits for such week(s) without pro-

viding employer name and address information and the amount of remuneration, and fails to respond to a request to provide such information, the claimant will be presumed to be not unemployed as defined in RCW 50.04.310 and therefore not eligible for benefits pursuant to RCW 50.20.010.

(3) The denial of benefits authorized by this section is for a definite period of time and applies only to the week or weeks for which work and earnings information is incomplete.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-011, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-011, filed 6/18/84.]

WAC 192-23-012 Failure to provide details on holiday and/or vacation pay. (1) If a claimant certifies that he or she has received holiday and/or vacation pay and the amount, and fails to respond to a request for specific information with respect to the holiday and/or vacation pay, the claimant will be presumed to be not unemployed as defined in RCW 50.04.310 and subject to denial pursuant to RCW 50.20.010.

(2) If a claimant reports that he or she has received or will receive remuneration for a week(s) not yet claimed and subsequently claims benefits for such week(s) without providing employer name and address information and the amount of remuneration, and fails to respond to a request to provide such information, the claimant will be presumed to be not unemployed as defined in RCW 50.04.310 and therefore not eligible for benefits pursuant to RCW 50.20.010.

(3) The denial of benefits authorized by this section is for a definite period of time and applies only to the week or weeks for which vacation and/or holiday pay information is incomplete.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-012, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-012, filed 6/18/84.]

WAC 192-23-051 Failure to provide details on separation from employment. If a claimant reports no work or earnings in a week following a week during which work and earnings were reported and does not provide complete employer and separation information, and does not respond to a request to supply complete employer and separation information, the claimant will be presumed to have voluntarily left work without good cause and will be denied pursuant to RCW 50.20.050.

(1) A separation from employment occurs whenever the employer-employee relationship is interrupted or ended. For the purpose of this section a separation from employment occurs whenever:

(a) An employee is not scheduled to work for a period of one week or more.

(b) A claimant has a week with no earnings following a week in which the claimant had earnings.

(2) For the purpose of this section, complete employer and separation information consists of the following items:

(a) Name of employer,

(b) Complete address of employer,

(c) Last day worked,

(d) Reason for separation from employment,

(e) Information on hours worked and earnings if not previously reported.

[Title 192 WAC—p. 26]

(3) The denial of benefits authorized by this section is indefinite in nature, and will remain in effect until the claimant meets the requalification provisions of RCW 50.20.050.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-051, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-051, filed 6/18/84.]

WAC 192-23-052 Failure to respond to a request for information regarding voluntary quit. (1) If a claimant fails to respond to a notice to provide detailed information with respect to voluntarily quitting work, the claimant shall be presumed to have voluntarily left work without good cause and denied benefits pursuant to RCW 50.20.050.

(2) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.050.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-052, filed 6/18/84.]

WAC 192-23-081 Failure to provide details on a refusal of an offer of work. (1) If a claimant certifies that he or she refused an offer of work or fails to certify whether he or she refused an offer of work, and fails to respond to a notice to report or request to provide details relating to refusing an offer of work, the individual will be presumed to have refused an offer of available, suitable work without good cause and will be subject to denial of benefits pursuant to RCW 50.20.080.

(2) The denial of benefits under this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.080. The beginning date of the denial will be the first day of week in which the claimant certified that he or she refused an offer of work or failed to indicate whether he or she refused an offer of work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-081, filed 6/18/84.]

WAC 192-23-082 Failure to respond to a request for information regarding failure to apply for work. If the agency has directed a claimant to apply for work, the agency is advised that the claimant failed to apply as directed, and the claimant fails to respond to a request for information regarding the failure to apply as directed, the claimant shall be deemed to have failed to apply for available, suitable work without good cause and shall be subject to denial pursuant to RCW 50.20.080.

(2) The denial of benefits under this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.080. The beginning date of the denial will be the date the claimant was directed to apply for work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-082, filed 6/18/84.]

WAC 192-23-091 Failure to respond to a request for information regarding labor dispute. (1) If an individual fails to respond to a request for information regarding a labor dispute, the individual will be presumed to be unemployed due to the labor dispute and directly interested in and/or participating in the dispute.

(2) The presumption that the claimant is unemployed due to the labor dispute and directly interested in and/or participating in the dispute shall continue until the claimant provides information otherwise.

(3) The employer must establish that a stoppage of work caused by a labor dispute has resulted in the claimant being unemployed before the claimant may be denied benefits pursuant to RCW 50.20.090.

(4) The denial of benefits under this section is indefinite in nature and will continue as long as the employer can establish that there is a stoppage of work caused by a labor dispute.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-091, filed 6/18/84.]

WAC 192-23-113 Failure to respond to a request to provide information regarding athletic employment. (1) If a claimant bases his or her eligibility for benefits on employment as a sport or athletic event participant and refuses to respond to a request for information regarding participation in past and coming seasons, the claimant shall be presumed to have a reasonable assurance of performing such services in an upcoming season and thereby be subject to denial of benefits pursuant to RCW 50.20.113.

(2) The denial in this section is definite in nature and applies to the entire period between seasons.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-113, filed 6/18/84.]

WAC 192-23-301 Failure to respond to a request for information regarding reasonable assurance of return to work. (1) In the case of a claimant whose benefits are based on services for an educational institution, and whose employer has provided information that the claimant has reasonable assurance of returning to employment during the following term, academic year or period following holiday or vacation, failure of the claimant to respond to a request for information concerning such assurance will result in a denial pursuant to the applicable section of RCW 50.44.050.

(2) The denial of benefits under this section is definite in nature, applying to the period between terms, between academic years, or the appropriate vacation and/or holiday period.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-301, filed 6/18/84.]

WAC 192-23-320 Failure to respond to a request for documentation of a systematic and sustained work search. As provided in RCW 50.22.020: (1) If a claimant is receiving shareable or extended benefits and fails to report a systematic and sustained work search and fails to respond to a request to provide work search information, the claimant shall be presumed to have failed to actively engage in seeking work and be subject to denial of benefits.

(2) The denial of benefits under this section is indefinite in nature and shall continue until the requalifying provisions are met.

(3) This regulation shall not apply to any week of unemployment exempted by the statute.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-23-320, filed 10/28/94, effective 11/28/94; 84-13-050 (Order 4-84), § 192-23-320, filed 6/18/84.]

(2005 Ed.)

WAC 192-23-350 Failure to respond to a request for pension information. (1) If a claimant certifies that he or she has applied for a retirement pension or that his or her retirement pension has changed since his or her last claim or the claimant has failed to indicate whether he or she has applied for a pension or his or her pension changed, and fails to respond to a request for pension information, or responds with inadequate pension information, the individual will be presumed to be receiving a pension in an amount greater than his or her weekly benefit amount and contributed to solely by a base year employer and be subject to denial of benefits pursuant to RCW 50.04.323.

(2) The denial of benefits under this section is indefinite and will continue until the claimant establishes that he or she is no longer subject to disqualification pursuant to RCW 50.04.323.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-350, filed 6/18/84.]

WAC 192-23-900 Claimant liable for repayment of overpayments caused by conditional payment. (1) If an overpayment of benefits results from a conditional payment and subsequent denial of benefits, the claimant is not eligible for waiver of that overpayment pursuant to RCW 50.20.190.

(2) A claimant who submits a claim form that fails to clearly establish eligibility and which results in a conditional payment is not without fault with respect to any overpayment subsequently established and therefore not eligible for the waiver provisions of RCW 50.20.190.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-900, filed 6/18/84.]

Chapter 192-28 WAC

RECOVERY OF BENEFIT OVERPAYMENTS

WAC

192-28-122	Application of offsets or cash repayments.
192-28-125	Recovery of benefit overpayment—Notification of right to appeal.
192-28-130	Minimum payment calculation.
192-28-135	Recovery of benefit overpayment—Overpayment collection and maximum benefit payable.
192-28-145	Overpayment subject to interest charges.
192-28-150	Benefit overpayment interest charges—Definitions.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-28-100	Recovery of benefit overpayment—General provisions. [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-100, filed 10/10/85.] Repealed by 95-09-085, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010.
192-28-105	Recovery of benefit overpayment—Notification to individual. [Statutory Authority: RCW 50.12.010 and 50.12.040. 96-20-051, § 192-28-105, filed 9/25/96, effective 10/26/96; 88-10-021 (Order 4-88), § 192-28-105, filed 4/29/88; 86-17-023 (Order 3-86), § 192-28-105, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-105, filed 10/10/85.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-28-110	Recovery of benefit overpayment—Fault provisions. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-28-110, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.01.040 [50.12.040]. 88-10-021 (Order 4-88), § 192-28-110, filed 4/29/88; 86-17-023 (Order 3-86), § 192-28-110, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-110, filed 10/10/85.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-28-115	Recovery of benefit overpayment—Equity and good conscience provisions. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-103, § 192-28-115, filed 8/21/90, effective 9/21/90; 86-17-023 (Order 3-86), § 192-28-115, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-115, filed 10/10/85.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.
192-28-120	Recovery of benefit overpayment—By repayment or offset against past or future benefits. [Statutory Authority: RCW 50.12.010 and 50.12.040. 96-20-051, § 192-28-120, filed 9/25/96, effective 10/26/96. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-28-120, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.01.040 [50.12.040]. 88-10-021 (Order 4-88), § 192-28-120, filed 4/29/88; 86-17-023 (Order 3-86), § 192-28-120, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-120, filed 10/10/85.] Repealed by 05-01-076, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042.

WAC 192-28-122 Application of offsets or cash repayments. (1) Offsets will only be applied against the overpayment assessment.

(2) Cash repayments will be applied against the outstanding balance as follows:

(a) Court assessments and warrant fees.

(b) Interest charges.

(c) The overpayment assessment.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-105, § 192-28-122, filed 8/21/90, effective 9/21/90.]

WAC 192-28-125 Recovery of benefit overpayment—Notification of right to appeal. (1) The department shall ensure that all interested employers and the individual to whom the overpayment is assessed are notified in writing of the overpayment assessment and their right to appeal any or all of the following elements of the overpayment assessment:

(a) The reason for the overpayment;

(b) The amount of the overpayment;

(c) The finding of fault or nonfault;

(d) The reason for waiver or denial of waiver of the overpayment.

(2) For the purposes of this chapter, interested employer means (1) any employer who provides information to the department which results in an overpayment assessment and (2) when waiver has been allowed all base year employers who make payments in lieu of contributions to the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-125, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-125, filed 10/10/85.]

WAC 192-28-130 Minimum payment calculation.

Unless otherwise authorized by the commissioner or his/her designee, the minimum monthly payment shall be as follows:

(1) A minimum monthly payment will not be calculated for overpayments assessed by states other than Washington. Recovery of benefit overpayments by offset against future benefits will be done in accordance to WAC 192-28-120 (5)(a) and (b).

(2) For overpayments assessed under RCW 50.20.070, the minimum monthly payment amount will be the individual's weekly benefit amount or three percent of the remaining overpayment balance at the time of the billing statement rounded to the next lower multiple of one dollar, whichever is greater.

(3) For all other overpayments, the minimum monthly payment amount will be one-third of the weekly benefit amount, three percent of the remaining overpayment balance at the time of the billing statement rounded to the next lower multiple of one dollar, or twenty-five dollars, whichever is greater.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-103, § 192-28-130, filed 8/21/90, effective 9/21/90; 88-10-021 (Order 4-88), § 192-28-130, filed 4/29/88.]

WAC 192-28-135 Recovery of benefit overpayment—Overpayment collection and maximum benefit

payable. (1) No otherwise eligible individual shall receive as benefit payment an amount in excess of the maximum benefit payable from an entitlement as established pursuant to the provisions of RCW 50.20.120 and/or 50.22.040 and 50.22.050.

(2) An individual may certify for offset of an overpayment on a valid benefit year as provided in WAC 192-28-120.

(a) Provided, when the new balance available on a valid benefit year is equal to or less than the balance of an overpayment on that benefit year, the offset shall be at the rate of one hundred percent, regardless of the provisions of WAC 192-28-120 and/or 192-28-130.

(b) Overpayments established on other than the current benefit year shall be offset from a valid benefit year as provided in WAC 192-28-120 and/or 192-28-130.

(3) Within a valid benefit year the total benefits properly paid plus the offset credits properly granted shall not exceed the maximum benefits payable.

(4) Any offset of an overpayment granted on the basis of information later determined to be fraudulent or misrepresented shall be cancelled and the amount restored to the overpayment balance.

(5) If any provision of this section is in conflict with federal regulation, the federal regulation shall apply.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-20-065 (Order 5-89), § 192-28-135, filed 10/4/89, effective 11/4/89.]

WAC 192-28-145 Overpayment subject to interest charges. (1) Overpayments assessed by another state, but collected by this department, will not be charged interest.

(2) No interest will be charged in months when the minimum monthly payment is received on or before the due date except on overpayments assessed pursuant to RCW 50.20.070. If a claimant appeals a charge of misrepresentation, interest continues to accrue during the period of the appeal. Interest is assessed if the overpayment is upheld.

(3) Overpayments based on misrepresentation (RCW 50.20.070) will be charged interest at the rate of one percent per month.

(4) Overpayments not based on misrepresentation will be charged interest at the rate of one percent per month if two or more minimum monthly payments are delinquent.

(5) Overpayments containing both misrepresentation and nonmisrepresentation will be charged interest in accordance with (3) and (4) above.

(6) If unusual circumstances exist, the commissioner or authorized delegate may suspend the assessment or collection of interest charges.

(7) A month, with respect to the charging of interest, begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 94-10-044, § 192-28-145, filed 5/2/94, effective 5/2/94; 90-17-105, § 192-28-145, filed 8/21/90, effective 9/21/90.]

WAC 192-28-150 Benefit overpayment interest charges—Definitions. (1) The "outstanding balance" is defined as the total of all unpaid overpayment assessments, warrant fees, court assessments and interest charges.

(2) The "due date" is defined as the date shown on the department's monthly statement, mailed to the claimant's last known address.

(3) "Delinquent" is defined as the minimum payment due, not being received on or before the due date.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-105, § 192-28-150, filed 8/21/90, effective 9/21/90.]

Chapter 192-32 WAC

TIMBER RETRAINING BENEFITS

WAC

192-32-010 Definitions.
 192-32-035 Residence in rural natural resources impact area at time of last separation from employment.
 192-32-050 Benefits payable only to workers enrolled in approved training.
 192-32-085 Full-time training.
 192-32-095 Certification of satisfactory progress.
 192-32-100 Modifying a training plan.
 192-32-115 Out-of-state training.
 192-32-130 Five weeks for work search following training.
 192-32-135 Thirteen weeks for remedial education.

Statutory Authority: RCW 50.12.010, 50.12.040 and 50.22.090.
 192-32-075 Occupation in demand outside labor market. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-075, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-075, filed 9/20/91, effective 10/21/91.] Repealed by 99-24-136, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.22.090.
 192-32-105 Interstate claims. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-105, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-105, filed 9/20/91, effective 10/21/91.] Repealed by 99-24-136, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.22.090.
 192-32-120 Forest products workers. [Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315. 92-05-051, § 192-32-120, filed 2/13/92, effective 3/15/92.] Repealed by 98-05-042, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090.
 192-32-125 Dislocated workers in timber impact areas. [Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315. 92-05-051, § 192-32-125, filed 2/13/92, effective 3/15/92.] Repealed by 98-05-042, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-32-001 Scope of chapter. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-32-001, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-001, filed 9/20/91, effective 10/21/91.] Repealed by 98-05-042, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090.
 192-32-015 Interpretive rule—Effective date of RCW 50.22.090. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-32-015, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-015, filed 9/20/91, effective 10/21/91.] Repealed by 98-05-042, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090.
 192-32-025 Post training benefits. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-32-025, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-025, filed 9/20/91, effective 10/21/91.] Repealed by 98-05-042, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090.
 192-32-040 Employment in the forest products industry. [Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-040, filed 9/20/91, effective 10/21/91.] Repealed by 99-24-136, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.22.090.
 192-32-045 Unlikely to return to employment. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-045, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-32-045, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-045, filed 9/20/91, effective 10/21/91.] Repealed by 99-24-136, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.22.090.
 192-32-055 Training program deadlines. [Statutory Authority: 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-055, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-055, filed 9/20/91, effective 10/21/91.] Repealed by 99-24-136, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.22.090.
 192-32-065 Training program application requirements. [Statutory Authority: 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-065, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-065, filed 9/20/91, effective 10/21/91.] Repealed by 99-24-136, filed 12/1/99, effective 1/1/00.

WAC 192-32-010 Definitions. For the purpose of this chapter and RCW 50.22.090:

- (1) "Commissioner" means commissioner of the employment security department.
- (2) "Department" means the employment security department.
- (3) "Displaced worker" means an individual who is unlikely to return to employment in his or her principal occupation or previous industry because of a diminishing demand within his or her labor market for his or her skills in the occupation or industry;
- (4) "Labor market" means the area in which workers of specific occupation customarily have found work. Labor market is based on the worker's place of residence and occupation.
- (5) "Satisfactory progress" means maintaining a grade point average sufficient to graduate, and taking sufficient credit hours to complete the approved course of study within the time frame established under the approved training plan.
- (6) "Timber retraining benefits," abbreviated TRB, means the additional unemployment insurance benefits authorized by RCW 50.22.090(3).
- (7) "Wages" means wages earned in employment as defined in chapter 50.04 RCW. This means that only wages in covered employment can be considered in determining if a worker has earned wages in employment in the forest products industry or in the fishing industry assigned Standard Industrial Code 0912.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-010, filed 2/11/98, effective 3/14/98. Statutory Author-

ity: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-32-010, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-010, filed 9/20/91, effective 10/21/91.]

WAC 192-32-035 Residence in rural natural resources impact area at time of last separation from employment. (1) If you met the residence requirements at the time you filed your initial claim for benefits, you have met those requirements until you establish a new benefit year, regardless of subsequent employment or relocation to another area.

(2) If you met the residence requirements when you filed your initial claim, you have met those requirements until a new benefit year is established, even if your residence ceases to fall within a designated rural natural resources impact area.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-035, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-035, filed 9/20/91, effective 10/21/91.]

WAC 192-32-050 Benefits payable only to workers enrolled in approved training. To receive timber retraining benefits, you must be enrolled in and making satisfactory progress in an approved training program. You are enrolled in training if:

- (1) Preregistered for classes or on a waiting list; and
- (2) Have a starting date of training; and
- (3) The starting date is not more than one quarter or term away.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-050, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-050, filed 9/20/91, effective 10/21/91.]

WAC 192-32-085 Full-time training. The educational institution providing the training will determine whether you are enrolled full time.

[Statutory Authority: 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-085, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-085, filed 9/20/91, effective 10/21/91.]

WAC 192-32-095 Certification of satisfactory progress. You will be determined to be making satisfactory progress in a training program if the educational institution certifies to the department that you are maintaining a grade point average sufficient to graduate and attending all scheduled classes included in your approved training plan for the current academic period. This certification must be signed by the registrar or an equivalent person designated by the educational institution.

[Statutory Authority: 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-095, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-095, filed 9/20/91, effective 10/21/91.]

WAC 192-32-100 Modifying a training plan. (1) You must notify the department immediately upon making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-12-182 and includes, but is not limited to, changes in your course of study or major, training

(2005 Ed.)

institution, projected start and completion dates, and enrolled credit hours. The department will review these changes to determine whether approval of your training plan will be continued.

(2) You may change your course of study or major one time. Your new course of study must be for an occupation or skill for which there are reasonable employment opportunities in the labor market in which you intend to seek work. Subsequent changes in your course of study or major will not be approved except in unusual individual circumstances.

(3) You may withdraw from training and reenroll at a later date one time. Subsequent applications to reenroll in a training program will not be approved except in unusual individual circumstances.

(4) The restriction in subsection (2) does not apply while you are enrolled in remedial training.

[Statutory Authority: 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-100, filed 2/11/98, effective 3/14/98.]

WAC 192-32-115 Out-of-state training. Out-of-state training may be approved at educational institutions equivalent to those described in RCW 28B.10.016 and 28C.04.410(3).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-115, filed 2/11/98, effective 3/14/98. Statutory Authority: RCW 50.12.010, 50.12.040 and 1991 c 315 § 4. 91-20-012, § 192-32-115, filed 9/20/91, effective 10/21/91.]

WAC 192-32-130 Five weeks for work search following training. The five weeks of additional benefits provided by RCW 50.22.090 (3)(c) are available for work search activities following completion of or termination or withdrawal from training. Once you begin work, these additional benefits are not available during any subsequent period of unemployment.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-130, filed 2/11/98, effective 3/14/98.]

WAC 192-32-135 Thirteen weeks for remedial education. The thirteen weeks of additional benefits provided by RCW 50.22.090 (3)(d) are payable under the following conditions:

(1) The remedial education program deemed necessary by the educational institution delayed the start date, or extended the completion date, of your approved training program; and

(2) The TRB benefits provided by RCW 50.22.090 (3)(b) have been exhausted; and

(3) You have not yet completed your approved training program.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010 and 50.22.090. 98-05-042, § 192-32-135, filed 2/11/98, effective 3/14/98.]

Chapter 192-33 WAC

WORKFORCE DEVELOPMENT

WAC

192-33-005	Definitions—Dislocated workers.
192-33-006	Dislocated workers in rural natural resources impact areas.

WAC 192-33-005 Definitions—Dislocated workers.

For the purposes of RCW 50.70.010:

(1) "Forest products worker" means an individual who has or had employment, either for wages or in self-employment, in the industries set forth in WAC 192-32-040.

(2) "Salmon fishing worker" means an individual who has or had employment, either for wages or self-employment, in the salmon industry. This includes employment in at least one of the industry line items listed within the following Standard Industrial Coded industries:

(a) Commercial salmon fishing (found within SIC 0912);

(b) Preparation of canned or cured salmon food products, including smoked, salted, dried, and pickled salmon products (found within SIC 2091);

(c) Preparation of fresh or frozen salmon products, including fish fillets or fish sticks (found within SIC 2092);

(d) Operation of boats or party fishing, in relation to salmon fishing (found within SIC 7999).

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.70.010. 98-05-042, § 192-33-005, filed 2/11/98, effective 3/14/98.]

WAC 192-33-006 Dislocated workers in rural natural resources impact areas. (1) For the purposes of RCW 50.12.270, the term "dislocated workers in rural natural resources impact areas" includes, but is not limited to:

(a) Dislocated forest products workers as defined in RCW 50.70.010(2) and WAC 192-33-005; and

(b) Dislocated salmon fishing workers as defined in RCW 50.70.010(4) and WAC 192-33-005.

(2) These individuals are persons who at the time of last separation from work, for either wages or self-employment, resided in a rural natural resources impact area and who:

(a) Have been terminated or received notices of termination from employment and are unlikely to return to employment as defined in WAC 192-32-045 in their principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry; or

(b) Are self-employed and have been displaced from their business because of diminishing demand for the business's services or goods.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 98-05-042, § 192-33-006, filed 2/11/98, effective 3/14/98.]

Chapter 192-34 WAC

TEMPORARY TOTAL DISABILITY

WAC

192-34-010	Definitions.
192-34-015	Exclusions.
192-34-020	Failure to apply in a timely manner.
192-34-025	Additional injuries.

WAC 192-34-010 Definitions. The following words and phrases as used in this chapter shall have the meanings set forth in this section unless the context otherwise requires:

(1) "Effective date of temporary total disability," for the purpose of establishing a base year, shall be Sunday of the week in which the individual:

(a) Became eligible for industrial insurance or crime victims compensation payments; or

(b) Became totally physically disabled due to a nonwork-related injury or illness.

(2) "Illness" means a condition marked by pronounced deviation from the normal healthy state, characterized by sickness, disease or disorder. The presence of alcohol abuse, drug abuse, antisocial behavior, or criminal history alone, or the commitment of an individual to a treatment program, is insufficient by itself to justify a finding of "illness" within the meaning of this chapter.

(3) "Industrial insurance" includes any program established by a public or private agency under the industrial insurance laws of this state, any other state, or the federal government to provide compensation to individuals who suffer an industrial disability that is total but of temporary duration.

(4) "Injury" means a trauma to the integrity or function of a tissue or organ and the physical conditions resulting therefrom.

(5) "Physician" means any person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

(6) "Reentry date," as it relates to a temporary total disability resulting from a nonwork-related injury or illness, shall be the date on which a physician releases the individual to return to work.

(7) "Temporary total disability" means an injury or illness, lasting thirteen or more consecutive calendar weeks, during which an individual is unable to follow continuously a substantially gainful occupation without seriously risking his or her health, as determined by a physician.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 94-07-115, § 192-34-010, filed 3/21/94, effective 5/2/94.]

WAC 192-34-015 Exclusions. The special provisions of chapter 50.06 RCW will not be available to individuals when:

(1) The injury or illness results to an individual from the deliberate intention of the individual to produce such injury or illness;

(2005 Ed.)

(2) The injury or illness is incurred while the individual is engaged in the attempt to commit, or the commission of, a criminal act. A "criminal act" shall include any unlawful action punishable as a felony or gross misdemeanor of which the individual has been convicted or has admitted committing to a competent authority; or

(3) The injury or illness is incurred as a result of the individual driving under the influence of intoxicating liquor or drugs or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 94-07-115, § 192-34-015, filed 3/21/94, effective 5/2/94.]

WAC 192-34-020 Failure to apply in a timely manner. In the event a claimant fails to apply for initial determination within the time period prescribed by RCW 50.06.030 (1) and (2), a late filing shall be accepted for good cause shown.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 94-07-115, § 192-34-020, filed 3/21/94, effective 5/2/94.]

WAC 192-34-025 Additional injuries. Two or more separate injuries or illnesses, resulting in two or more separate periods of temporary total disability, may not be combined or joined. A unique base year and benefit year shall be established for each injury or illness pursuant to chapter 50.06 RCW.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 94-07-115, § 192-34-025, filed 3/21/94, effective 5/2/94.]

Chapter 192-35 WAC

IMPROVING EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH DISABILITIES THROUGH STATE USE CONTRACTS

WAC

192-35-010	Definitions.
192-35-020	The state use advisory committee.
192-35-030	Meetings.
192-35-040	Application for listing as a vendor in good standing.
192-35-050	Application fees.
192-35-060	Period of eligibility.
192-35-070	Denials and appeals.
192-35-080	Application of brief adjudicative proceedings.
192-35-090	Conduct of brief adjudicative proceedings.
192-35-100	Preliminary record in brief adjudicative proceedings.
192-35-110	Appeal of the brief adjudicative proceedings.
192-35-120	Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings.

WAC 192-35-010 Definitions. "Application base" means either the first fifteen applications for vendor in good standing received, or all applications for vendor in good standing received during the first twelve months of the program, whichever is greater at the time an application is being considered.

"Integrated setting" means a setting commonly found in the community (such as a store, office or school) where the individual with a disability comes into contact with nondisabled people who are not providing vocational rehabilitation services or other specialized services to that individual; or a setting commonly found in the community where the individual with a disability comes into contact with nondisabled people as he/she does his/her work. The amount of contact the individual with a disability has with nondisabled people is the same that a nondisabled person in the same type of job would experience.

"Transitioned to a less restrictive employment setting" means any change to an individual's job or work setting, or working conditions that increases that individual's workplace integration, independence from special services or participation in unsubsidized work. Some examples include moving from sheltered to supported employment; or from nonintegrated to integrated employment; or from working for a community rehabilitation program to working for a community employer.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-010, filed 1/5/05, effective 2/5/05.]

WAC 192-35-020 The state use advisory committee. The state use advisory committee hereinafter referred to as the SUAC, is established within the governor's committee on disability issues and employment (GCDE). The SUAC shall have the following composition:

(1) Three members chosen by GCDE from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability;

(2) One member chosen by GCDE from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves;

(3) One member chosen by GCDE from among those who have been nominated by a community rehabilitation program;

(4) One member chosen by GCDE from among those owners of a business owned and operated by persons with disabilities who have nominated themselves;

(5) One member who is designated by the developmental disabilities council;

(6) One member who is a member of and selected by GCDE;

(7) One member who is designated by the secretary of the department of social and health services; and

(8) One member who is designated by the director of the department of services for the blind.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-020, filed 1/5/05, effective 2/5/05.]

WAC 192-35-030 Meetings. The SUAC shall hold its regular public meeting annually in December. Additional public meetings may be held at such times and places as the board may deem necessary. Notice of all public meetings will be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.

Executive sessions may be held by the board in conjunction with all public meetings, and at such other times as the board shall deem necessary. Executive sessions shall deal only with matters authorized by RCW 42.30.110.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-030, filed 1/5/05, effective 2/5/05.]

WAC 192-35-040 Application for listing as a vendor in good standing. The application for listing as a vendor in good standing must be submitted on forms approved by the SUAC and shall be accompanied by additional documentation as follows:

(1) Applications from community rehabilitation programs must be accompanied by:

(a) A document issued by the department of social and health services recognizing the applicant as eligible to do business as a community rehabilitation program; and

(b) A document issued by the secretary of state establishing that the applicant is registered as a nonprofit corporation.

(2) Applications by business owned and operated by persons with disabilities must be accompanied by documentation:

(a) Issued by the department of social and health services establishing that the individual exercising ownership and control has been determined to have a developmental disability as defined in RCW 71A.10.020; or

(b) Issued by an agency established under Title I of the Federal Vocational Rehabilitation Act establishing that the individual exercising ownership and control has been determined to be or have been eligible for vocational rehabilitation services; or

(c) Issued by the United States Social Security Administration establishing that the individual exercising ownership and control has been determined to be or have been eligible for Social Security Disability Insurance or Supplemental Security Income; or

(d) Issued by the United States Department of Veterans Affairs establishing that the individual exercising ownership and control has been determined to be or have been eligible for vocational rehabilitation services due to a service connected disability under 38 U.S.C. Sec. 3100 et seq.

(3) Applications must be accompanied by documentation that objectively demonstrates that the applicant has met or made progress over the previous twelve months toward meeting a minimum of six of the following criteria:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings. To demonstrate progress for this criterion an applicant's documentation must show that the number of people with disabilities employed by it, and working in an integrated setting, during the quarter immediately preceding the date of application is greater than the number of people with disabilities employed by it, and working in an integrated setting for the same quarter in the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the number of people with disabilities employed by it, and working in an integrated setting during the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings. To demonstrate progress for this criterion an applicant's documentation must show that the percent of those people with disabilities employed by it and working in an integrated setting, during the quarter immediately preceding the date of application is greater than the percentage of people with disabilities employed by it, and working in an integrated setting for the same quarter in the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the percentage of people with disabilities employed by it, and working in an integrated setting, during the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings. To demonstrate progress for this criterion an applicant's documentation must show that the number of people with disabilities employed by it, and working in individual supported employment settings, during the quarter immediately preceding the date of application is greater than the number of people with disabilities employed by it, and

working in individual supported employment settings for the same quarter for the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the number of people with disabilities employed by it, and working in individual employment settings for the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings. To demonstrate progress for this criterion an applicant's documentation must show that the percent of people with disabilities among all individuals employed by it, and working in an individual supported employment setting, during the quarter immediately preceding the date of application is greater than the percentage of people with disabilities employed by it, and working in an integrated setting for the same quarter of the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the percentage of people with disabilities employed by it, and working in an individual supported employment setting, during the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers. To demonstrate progress for this criterion an applicant's documentation must show that the number of people with disabilities who had been employed by it at some point during the twelve months immediately preceding the time of application and had transitioned to less restrictive employment settings during those twelve months either within the entity or with other community employers was greater than the number of such employees who had made such a transition during the prior twelve months. To demonstrate that it has met this criterion, an applicant's documentation must show that the number of people who had been employed by it at some point during the twelve months immediately preceding the time of application and had transitioned to less restrictive employment settings during those twelve months either within the entity or with other community employers at the time of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage. To demonstrate progress for this criterion an applicant's documentation must show that the number of people with disabilities employed by it, who were paid at least the state minimum wage for all hours worked, during the quarter immediately preceding the date of application is greater than the number of people with disabilities employed by it, and paid at least the state minimum wage for all hours worked for the same quarter for the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the number of people with disabilities employed by it, and paid at least the state minimum wage for all hours worked for the same quarter of the previous year is at least

one standard deviation higher than the norm for this criterion derived from the application base.

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage. To demonstrate progress for this criterion an applicant's documentation must show that the percent of people with disabilities among all people with disabilities employed by it, who were paid at least the state minimum wage for all hours worked during the quarter immediately preceding the date of application is greater than the percentage of people with disabilities employed by it, who were paid at least state minimum wage for all hours worked for the same quarter for the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the percentage of people with disabilities employed by it, who were paid at least state minimum wage for all hours worked for the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(h) The number of people with disabilities serving in supervisory capacities within the entity. To demonstrate progress for this criterion an applicant's documentation must show that the number of people with disabilities employed by it in positions in which they supervised the work of other employees during the quarter immediately preceding the date of application is greater than the number of people with disabilities employed by it in such positions during the same quarter for the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the number of people with disabilities employed by it in positions in which they supervised the work of other employees during the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities. To demonstrate progress for this criterion an applicant's documentation must show that the percent of people with disabilities among all individuals employed by it in positions in which they supervise the work of other employees during the quarter immediately preceding the date of application is greater than the percentage of people with disabilities employed by it in such positions for the same quarter of the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the percentage of people with disabilities employed by it in supervisory positions at the time of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity. To demonstrate progress for this criterion an applicant's documentation must show that the number of people with disabilities who exercise ownership and participate in the day to day management of the entity, or who serve in elected or appointed positions on a board with the authority to hire and fire the executive director of the entity during the quarter immediately preceding the date of application is greater than the number of people with disabilities in such positions during the same quarter for the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the number of people with disabilities in such

positions during the quarter immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities as compared to the total amount paid by the entity in wages, salaries, and related employment benefits to persons without disabilities during the previous year. To demonstrate progress for this criterion an applicant's documentation must show that the total amount paid by it in wages, salaries, and related employment benefits to people with disabilities during the twelve months immediately preceding the date of application had increased in proportion to the total amount it paid in wages, salaries, and related employment benefits to people who do not have a disability when compared to the ratio of those two figures from the previous year. To demonstrate that it has met this criterion, an applicant's documentation must show that the ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities as compared to the total amount paid by the entity in wages, salaries, and related employment benefits to persons without disabilities for the twelve months immediately preceding the date of application is at least one standard deviation higher than the norm for this criterion derived from the application base.

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan. To demonstrate progress for this criterion an applicant's documentation must show that the percent of people with disabilities employed by it, for whom it had developed reasonable, achievable, written career plans, at the time of application was greater than the percentage of people with disabilities employed by it for whom it had developed reasonable, achievable, written career plans one year prior to the time of application. To demonstrate that it has met this criterion, an applicant's documentation must show that the percentage of people with disabilities employed by it for whom it had developed reasonable, achievable, written career plans at the time of application was at least one standard deviation higher than the norm for this criterion derived from the applications submitted that program year.

(4) In the event that the SUAC preliminarily determines that the documentation provided in an application is insufficient to demonstrate objectively that the applicant has made progress in or met at least six of the relevant eligibility criteria under this chapter, the SUAC will communicate that determination to the applicant in writing. The notification will clearly identify the specific criteria for which the SUAC determined the applicant's documentation to be insufficient. The SUAC will hold the application open for up to six months from the date of the notification during which time the applicant may submit additional documentation addressing the identified deficiencies.

(5) Applicants must also provide such documentation as may be required by the department of general administration to establish:

(a) That the applicant has not been in material breach of any quality or performance provision of any contract for the purchase of goods or services during the past thirty-six months; and

(b) Those goods and services for which the applicant is seeking to be listed as a vendor in good standing.

(6) Applicants must also provide such additional information, or documentation as may be required by the office of minority and women's business enterprises for the purpose of determining ownership and exercise of control of a business.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-040, filed 1/5/05, effective 2/5/05.]

WAC 192-35-050 Application fees. Applications must be accompanied by the annual application fee of five hundred dollars. The application fee is nonrefundable.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-050, filed 1/5/05, effective 2/5/05.]

WAC 192-35-060 Period of eligibility. Applicants will be listed as vendors in good standing for a period of one year beginning on the date of final determination of eligibility to be so listed: Unless, prior to the end of that period, the applicant requests in writing to be removed from that listing; or is found to be in material breach of any quality or performance provision of any contract for the purchase of goods or services. Applications for continued listing or relisting for subsequent periods of eligibility are subject to the same documentation requirements, fees and procedures as initial applications.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-060, filed 1/5/05, effective 2/5/05.]

WAC 192-35-070 Denials and appeals. The governor's committee on disability issues and employment will provide written notice when it has determined that an applicant failed to demonstrate that it has met the eligibility criteria for a vendor in good standing. The written notice shall include the basis for that determination; a notification of the applicant's right to appeal; and the address to which an appeal may be submitted. Applicants shall have thirty working days from the date of the notice to file an appeal. All appeals must be in writing.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-070, filed 1/5/05, effective 2/5/05.]

WAC 192-35-080 Application of brief adjudicative proceedings. The commissioner adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request pursuant to subsection (1) of this section or at the discretion of the commissioner pursuant to RCW 34.05.482.

(1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the governor's committee on disability issues and employment accepts the recommendation of the state use advisory committee and the matter involves a determination of one or more of the following issues:

(a) Whether an applicant has provided clear documentation that it qualifies under the criteria established by RCW 43.19.525 (1)(a) through (d); or

(b) Whether an applicant has provided clear documentation that it qualifies under the criteria established by RCW 43.19.525 (2)(a) and (b); or

(2005 Ed.)

(c) Whether an applicant has provided clear documentation that it qualifies under the criteria established by RCW 50.40.065 (3)(a) through (l).

(2) Brief adjudicative proceedings under subsection (1) of this section will be limited to consideration of the following issues:

(a) In proceedings under subsections (1)(a) and (b) of this section, the sole issue to be considered at the hearing is whether the documentation submitted by an applicant clearly establishes that the applicant has been determined to meet the applicable eligibility criterion or criteria under RCW 43.19.525 (1) or (2) by the agency or agencies authorized to make that determination;

(b) In proceedings under subsection (1)(c) of this section, the sole issue to be considered at the hearing is whether the documentation submitted by the applicant clearly demonstrates that the applicant has either met or made progress over the previous twelve months toward meeting a minimum of six of the criteria established in RCW 50.40.065.

(3) Brief adjudicative proceedings may not be used to appeal a decision by the governor's committee on disability issues and employment to reject a recommendation of the state use advisory committee, based on a finding of misfeasance or malfeasance.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-080, filed 1/5/05, effective 2/5/05.]

WAC 192-35-090 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings shall be conducted by a presiding officer appointed by the commissioner or designee in accordance with RCW 34.05.485. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but must not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, at his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(6) The presiding officer for brief adjudicative proceedings will not issue an oral order. Within ten working days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings will enter an initial written order.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-090, filed 1/5/05, effective 2/5/05.]

WAC 192-35-100 Preliminary record in brief adjudicative proceedings. The preliminary record with respect to an application must consist of:

(1) The application and all associated documents; and

(2) All documents relied upon by the state use advisory committee in proposing to deny the application; and

[Title 192 WAC—p. 37]

(3) All correspondence between the applicant and the state use advisory committee regarding the application.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-100, filed 1/5/05, effective 2/5/05.]

WAC 192-35-110 Appeal of the brief adjudicative proceedings. (1) Within thirty working days following the issuance of an initial written order, any party, including the department, may file a written appeal of that order with the deputy commissioner.

(2) The deputy commissioner will review the record of the brief adjudicative proceedings under appeal and issue the final written order, within thirty working days of the receipt of the appeal.

(3) The final written order, issued by the deputy commissioner, shall be the department's final decision on all matters subject to these brief adjudicative proceedings.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-110, filed 1/5/05, effective 2/5/05.]

WAC 192-35-120 Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings. (1) At least five working days before the scheduled brief adjudicative proceeding, any party, including the department, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that a matter be converted to a formal adjudicative hearing. Upon receiving a timely written objection, the presiding officer shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding officer may convert any brief adjudicative proceeding to a formal adjudicative hearing whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the agency.

(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

(a) Whether witness testimony will aid the presiding officer in resolving contested issues of fact;

(b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;

(c) Whether a brief adjudicative proceeding will establish an adequate record for further agency or judicial review;

(d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the agency;

(e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and

(f) Any other factors that the presiding officer deems relevant in reaching a determination.

(3) The written order of the formal adjudicative hearing shall be the department's final decision.

[Statutory Authority: RCW 50.12.040. 05-02-094, § 192-35-120, filed 1/5/05, effective 2/5/05.]

Chapter 192-36 WAC

SHARED WORK

WAC	
192-36-010	Information for employees participating in an approved shared work plan.
192-36-015	Criteria for approving a shared work plan.
192-36-020	Information for employers with an approved shared work plan.
192-36-025	Are corporate officers eligible for participation in the shared work program?

WAC 192-36-010 Information for employees participating in an approved shared work plan. (1) **How do I file a claim for benefits?** Follow the instructions contained in WAC 192-12-141 when filing an initial application or a continued claim for unemployment benefits, except that:

(a) In addition to the information required by WAC 192-12-141 (5)(a) to be included in your claim, you must also report the number of hours for which you received holiday, vacation, or sick pay; and

(b) Your initial application must be filed at the job service center designated by the department. Continued claims can be filed in person, by mail, or by telephone. The job service center at which your initial application was filed will remain the office of record for your claim as long as you participate in the shared work plan.

(2) **How will my shared work benefits be calculated if the total number of hours worked is not a whole number?** If the total number of hours you worked in a week includes a fraction of an hour, the department will round the number down to the next whole number. This rounded number will be calculated against your usual hours of work to determine your shared work weekly benefit amount. Example: You work 28.5 hours of a normal 40-hour work week; 28 hours divided by 40 means you worked 70% of the available hours. Your shared work weekly benefit amount would be 30% of your regular weekly unemployment compensation benefit amount.

(3) **What if I don't accept all hours of work offered by the shared work employer?** (a) You must work all hours for which you have been scheduled or you are not eligible for the shared work program for that week.

(b) You must be available for additional hours of work, up to full-time, with the shared work employer. If your employer provides you at least 24 hours notice that additional work is available and you do not work those additional hours, you are not eligible for benefits under the shared work program for that week.

(c) Your eligibility for other unemployment compensation benefits for any week in which you are not eligible for shared work benefits will be determined according to the provisions of Title 50 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.60.901. 96-11-141, § 192-36-010, filed 5/22/96, effective 6/22/96.]

WAC 192-36-015 Criteria for approving a shared work plan. In addition to meeting the criteria listed in RCW (2005 Ed.)

50.60.030, an employer who wishes to participate in the shared work program must:

(1) Be current in the payment of all unemployment insurance taxes required under Title 50 RCW; or

(2) Have an approved deferred payment contract on file with the department.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.60.901. 96-11-141, § 192-36-015, filed 5/22/96, effective 6/22/96.]

WAC 192-36-020 Information for employers with an approved shared work plan. (1) **What information am I responsible for providing to my employees?** Once your shared work plan is approved, you are responsible for advising your employees:

(a) That they are approved for participation in the shared work program; and

(b) The location of the job service center where they must file their claim for benefits.

(2) **What if I want to modify an approved plan?**

(a) If you want to make a change to an approved plan, such as modifying the work unit(s) affected or the percentage of employees included in the plan, you must submit a written modification in advance to the department's shared work unit.

(b) If the names of individual employees participating in the plan change, you must notify the department's shared work unit in advance in writing.

(c) If the hours worked by an employee change from week to week, you are not required to submit the information to the department in writing if you have a signed authorization to modify the plan on file with the department.

(3) **What information am I responsible for providing to the department?** In addition to the plan modification information required under subsection (2), you are responsible for verifying the information contained on the shared work payments report provided by the department, and reporting any discrepancies in writing to the job service center that is processing your employees' unemployment claims.

(4) **How many times can I have a shared work plan approved?** An approved plan may last for up to twelve months after its effective date. Upon expiration, you may submit a new plan to the department for approval. Effective January 1, 1997, a new plan will not be approved for your company if your employees have been participating in the shared work program for three consecutive twelve-month periods. You will not be eligible for a new plan until at least twelve consecutive months have elapsed since the expiration date of your most recent approved plan.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.60.901. 96-11-141, § 192-36-020, filed 5/22/96, effective 6/22/96.]

WAC 192-36-025 Are corporate officers eligible for participation in the shared work program? Corporate officers who elect coverage under RCW 50.04.165 may par-

ticipate in an approved shared work plan. However, as part of the request for plan approval, the corporation must submit to the department documents verifying that the corporate officers participating in the plan worked full-time for the corporation. Documentation may include federal or state tax records, corporate officer individual earnings records, or other acceptable evidence verifying the number of hours worked.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.60.901. 96-11-141, § 192-36-025, filed 5/22/96, effective 6/22/96.]

Chapter 192-40 WAC

HEARING AND REVIEW PROCEDURES UNDER THE JOB TRAINING PARTNERSHIP ACT

WAC

192-40-010	Introduction—Purpose of rules.
192-40-020	Definitions.
192-40-030	Local hearings—Obligation.
192-40-040	Review of local decisions.
192-40-050	Review of local decisions—Finality of assistant commissioner decision.
192-40-060	Review of decisions—Delegation of responsibility.
192-40-070	State level hearing request.
192-40-080	State level hearing procedure.
192-40-090	State level decision by office of administrative hearings.
192-40-100	Review of state level decision.
192-40-110	Savings provision.

WAC 192-40-010 Introduction—Purpose of rules.

These rules are intended to assist persons, organizations or governmental entities in fulfilling their obligations or exercising their rights under the Job Training Partnership Act and the regulations enacted pursuant thereto. The rules will describe two procedures, the first dealing with complaints, alleged adverse actions or grievances in which a hearing is required to be conducted at the administrative entity, recipient, or direct subrecipient level. The procedures for dealing with these matters are identified as procedures applicable to local hearings and decisions. The second set of procedures deals with complaints, alleged adverse action or grievances properly brought at the state level.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-010, filed 4/1/86.]

WAC 192-40-020 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assistant commissioner" means the senior administrator for the training and employment analysis division of the employment security department.

(2) "Interested party" means an individual who participates in or applies for participation in a program administered under the JTPA, or a person or organization which is directly or adversely affected by organizations or individuals operating programs under JTPA.

(3) "JTPA" means the Job Training Partnership Act of 1982, Public Law No. 97-300, as amended, codified as 29 U.S.C. §1501 et seq.

(4) "TEA" means the training and employment analysis division.

(5) "Provisions" means the Job Training Partnership Act provisions issued by the employment security department.

(6) "Reviewing officer" means the commissioner's review office which acts as the commissioner's delegate in the review of employment security adjudicative matters.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-020, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-020, filed 4/1/86.]

(2005 Ed.)

WAC 192-40-030 Local hearings—Obligation. Each administrative entity, subrecipient, and direct subrecipient shall provide hearings in accordance with the Job Training Partnership Act, regulations, and state provisions.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-030, filed 4/1/86.]

WAC 192-40-040 Review of local decisions. Any person adversely affected by a local decision or by the failure of the responsible entity to comply with its responsibilities to hold a hearing and issue a decision may request review of the decision or inaction, as the case may be, by filing a petition with the "assistant commissioner."

(1) Any individual or organization may petition for review of a local level decision or lack thereof when:

(a) Applicable JTPA procedures have been exhausted; and

(b) A decision was not received within sixty days of the filing of the complaint, alleged adverse action, or grievance; or

(c) The decision received was unsatisfactory to an interested party.

(2) A petition for review will be regarded as filed on the date a written request is received by the assistant commissioner of the training and employment analysis division of the employment security department. Petitions must be filed within ten days after the date on which the local decision was mailed or within ten days from the date on which the complainant should have received the local decision. If the petition is mailed, it will be deemed filed with the addressee on the postmark date if it is properly addressed and has sufficient postage. The petition for review will be addressed to: Assistant Commissioner, Training and Employment Analysis Division, Employment Security Department, Mailstop KG-11, Olympia, Washington 98504.

(3) Within five days of any request from the assistant commissioner the local authority will transmit all records pertaining to the matter under review to the assistant commissioner.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-040, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-040, filed 4/1/86.]

WAC 192-40-050 Review of local decisions—Finality of assistant commissioner decision. The review of local decisions shall be confined to the record under review and shall be limited to consideration only of those matters over which the assistant commissioner has jurisdiction. In the event that the record is incomplete, or otherwise provides insufficient information upon which to base a decision, the assistant commissioner may remand the matter to the responsible local authority for the taking of further evidence and

[Title 192 WAC—p. 41]

issuance of a new decision based thereon, subject to further review, or should he or she be convinced that a fair hearing will not be provided by the local authority he or she may assign the case to be heard by an administrative law judge to be designated by the office of administrative hearings. In the latter event the administrative law judge shall conduct a hearing and issue a decision which will be deemed the decision of the local authority subject to review by the assistant commissioner in the same manner as any other local decision.

The decision of the assistant commissioner upon review of local decisions is a final agency action and is subject to review under RCW 34.05.570.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-050, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-050, filed 4/1/86.]

WAC 192-40-060 Review of decisions—Delegation of responsibility. In the interest of fairness, the assistant commissioner reserves the option to delegate the review procedure as described in WAC 192-40-050 to the commissioner's review office of the employment security department or other qualified legal authority. The decision of the delegated review authority is a final agency action and subject to review under RCW 34.05.570.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-060, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-060, filed 4/1/86.]

WAC 192-40-070 State level hearing request. Any aggrieved party with a timely complaint, alleged adverse action, or grievance against the state administrative office for JTPA shall be provided a written description of the training and employment analysis division complaint procedures including notification of their right to file a complaint and instructions on how to file.

Any party aggrieved by an unresolved complaint, alleged adverse action, or grievance properly filed with the state administrative office for JTPA operations will be deemed to have filed a request for hearing unless the party has waived right to hearing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-070, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-070, filed 4/1/86.]

WAC 192-40-080 State level hearing procedure. Upon receipt of a request for hearing, the training and employment analysis division will request the office of administrative hearings to conduct a hearing pursuant to 29 U.S.C. §§1554 and 1577, except for complaints of discrimination filed pursuant to 42 U.S.C. §2000(d), et seq.

Advance written notice of the hearing will be provided by regular mail to all interested parties at least twenty days prior to the hearing to permit adequate preparation of the case. The notice will include:

(1) The time, date, and place of the hearing. Hearings shall be held at the regularly established hearing locations most convenient to the interested parties, or at the discretion of the presiding administrative law judge, by telephone;

(2) The name, address, and telephone number of the person to notify in the event it is not possible for the party or its legal counsel to attend the scheduled hearing;

(3) The hearing procedures, a statement of the issues, and any other information which would provide the party or its legal counsel with an understanding of the proceedings and contribute to the effective presentation of the party's case;

(4) An explanation that the party or its legal counsel may examine the case file prior to the hearing.

Any interested party may waive his/her right to notice either in writing or on the record.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-080, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-080, filed 4/1/86.]

WAC 192-40-090 State level decision by office of administrative hearings. After affording the interested parties an opportunity for hearing on the matter, the presiding administrative law judge shall issue his/her decision in the case. The decision shall be issued within 60 days of the initial filing of the request for hearing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-090, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-090, filed 4/1/86.]

WAC 192-40-100 Review of state level decision.

When a request for review is made of a state level decision, a proceeding under WAC 192-40-070, the review shall be conducted by the commissioner's review office of the employment security department. A request for such review must be directed to the commissioner's review office within twenty days of the issuance of the decision of the administrative law judge. Said review will be of the record prepared by the office of administrative hearings and will result in a decision in writing affirming, modifying, or reversing the decision of the administrative law judge, or in the event that the record is incomplete, or otherwise provides insufficient information upon which to pass a decision, the commissioner's review office may remand the matter to the office of administrative hearings for the taking of further evidence and the issuance of a new decision based thereon. The decision of the commissioner's review office shall be deemed a final state action subject to petition for judicial review pursuant to RCW 34.05.570.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-40-100, filed 11/30/89, effective 1/1/90; 86-08-073 (Order 1-86), § 192-40-100, filed 4/1/86.]

WAC 192-40-110 Savings provision. To the extent that any regulations adopted in this chapter are in conflict with provisions of federal law or regulations or state law, the conflicting provisions shall be deemed inoperative solely to the extent of the conflict.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-110, filed 4/1/86.]

Chapter 192-100 WAC

GENERAL TERMS DEFINED

WAC

192-100-010	Reasonably prudent person defined.
192-100-020	Continued claim defined.
192-100-030	Week defined.
192-100-035	Effective date of claim defined.
192-100-500	General definitions—Relating to wages.
192-100-510	Definitions relating to RCW 50.04.145 and 50.24.130.

WAC 192-100-010 Reasonably prudent person defined. A reasonably prudent person is an individual who uses good judgment or common sense in handling practical matters. The actions of a person exercising common sense in a similar situation are the guide in determining whether an individual's actions were reasonable.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-100-010, filed 12/9/04, effective 1/9/05.]

WAC 192-100-020 Continued claim defined. (1) You are a continued claim recipient if you:

- (a) Are monetarily entitled to benefits; and
- (b) Are nonmonetarily eligible for benefits; and
- (c) Have received credit for your waiting week or payment of benefits for one or more weeks in your benefit year and in the current continued claim series.

(2) Continued claim status will end following any combination of four or more consecutive weeks for which you do not file a claim or during which you are not an unemployed individual as defined in RCW 50.04.310.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-100-020, filed 12/9/04, effective 1/9/05.]

WAC 192-100-030 Week defined. The term "week" means a period of seven consecutive calendar days beginning on Sunday at 12:01 a.m. and ending at midnight the following Saturday.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-100-030, filed 12/9/04, effective 1/9/05.]

WAC 192-100-035 Effective date of claim defined. As provided in RCW 50.04.030, an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-100-035, filed 12/9/04, effective 1/9/05.]

WAC 192-100-500 General definitions—Relating to wages. For purposes of unemployment insurance taxes only:

(1) **Wages.** Includes all payments for personal services performed by an employee for an employer including the cash value of all remuneration paid in any medium other than cash including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advan-

(2005 Ed.)

tage received from the individual's employer or directly with respect to work for the employer.

(2) **Wages paid.** Includes wages that are actually received by an individual and wages that are contractually due but are not paid because the employer refuses or is unable to make such payment. (See RCW 50.24.015).

(3) **Wages constructively paid.** Those wages set aside, by mutual agreement of both parties (employer and employee) to be paid at a later date. They are reported for tax purposes when actually paid to the employee. The wages set aside can have no substantial limitation or restriction as to the time or manner or condition upon which payment is to be made. In addition the ability to draw on the wages must be within the control and disposition of the employee.

(4) **Deductions.** The amount(s) any federal or state law requires an employer to deduct from the wages of an individual in its employ; and to pay the amount deducted to the federal or state government, or any of their political subdivisions. The amount deducted will be considered wages and to have been paid to the individual at the time of the deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.010. 99-20-125, § 192-100-500, filed 10/6/99, effective 11/6/99.]

WAC 192-100-510 Definitions relating to RCW 50.04.145 and 50.24.130. For the purposes of RCW 50.04.145 and 50.24.130.

Definitions:

(1) **Same work.** Means work performed in the same trade or craft (i.e. carpenters, electricians, etc.).

(2) **At the same time.** Means occurring concurrently as opposed to the case of one contractor replacing another in the same trade.

(3) **Project.** Means any work performed under a contract within the scope of a building permit; or, if a building permit is not required, work performed under a contract.

(4) **Separate set of books or records.** Means records other than those maintained by the contractor for which services are performed.

[Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.145 and 50.24.130. 99-20-126, § 192-100-510, filed 10/6/99, effective 11/6/99.]

Chapter 192-110 WAC

APPLYING FOR UNEMPLOYMENT BENEFITS

WAC

192-110-005	Applying for unemployment benefits—General.
192-110-010	Applications for benefits by interstate claimants.
192-110-015	Applications by partially unemployed or standby workers—RCW 50.04.310, 50.20.010, and 50.20.130.
192-110-020	How will the department verify my identity?
192-110-050	How do I reopen my claim?
192-110-200	Maximum benefits payable—RCW 50.20.120 (1)(b).
192-110-210	Claim cancellation.

WAC 192-110-005 Applying for unemployment benefits—General. (1) How do I apply for benefits?

(a) File your application for benefits by placing a telephone call to the unemployment claims telecenter listed in your local telephone directory.

(b) In situations involving individuals with physical or sensory disabilities that make filing by telephone difficult, or in other unusual circumstances, the commissioner can authorize other methods for filing an application for benefits.

(2) **When can I apply?** You may apply at any time between the hours of 8:00 a.m. and 5:00 p.m. (Pacific Time) Monday through Friday (excluding state holidays), even if you are working. Your claim is effective on the Sunday of the week you file your claim.

(3) **What information am I required to provide?** The minimum information needed to process your application is:

(a) Your legal name; and

(b) Your social security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past two years. Other information may be requested in individual circumstances.

(3) **Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before any benefits for future weeks can be paid to you.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-110-005, filed 4/5/99, effective 5/6/99.]

WAC 192-110-010 Applications for benefits by interstate claimants. (1) What is an "interstate claimant"? An "interstate claimant" is a person who files a claim for one state's unemployment benefits from another state. The state that pays your claim is called the "liable state". For example:

(a) You are an interstate claimant if you live in Oregon and file a claim from Oregon for benefits that will be paid by Washington.

(b) You are an interstate claimant if you live in Washington and file a claim in Washington for benefits that will be paid by Oregon.

(c) You are NOT an interstate claimant if you live in Oregon but file your claim for Washington benefits in Washington; this is because your claim was filed in the same state that will be paying your benefits.

[Title 192 WAC—p. 44]

(2) **Where can I apply for benefits?** You can file your application for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada.

(3) **How do I apply for benefits?** Place a telephone call to the unemployment claims telecenter in Washington. You will be asked whether you worked in any state other than Washington within the last two years. This will help decide which state will be paying your claim.

(a) If Washington will be paying your claim, your application for benefits will be taken over the telephone;

(b) If another state will be paying your claim, you will be told how to file your claim with that state.

(4) **Who decides if I am eligible for benefits?** Every state has its own laws which control eligibility for benefits. If you file a claim for Washington benefits, your eligibility for benefits will be decided by Washington state law even if you file from another state. If you file for benefits against another state, your eligibility for benefits will be decided under that state's laws.

(5) **When can I apply for benefits?** You can apply for benefits at any time, even if you are working. However, if you already have a valid claim in one state, you must continue with that claim as long as benefits are available before a new claim against another state can be established. A "valid" claim is one that has not been denied, terminated, or the benefits exhausted (paid out).

(6) **How do I file an appeal?** If you wish to file an appeal about your claim, do so by filing it directly with the state that is paying your claim (liable state):

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If mailed, your appeal will be considered filed on the postmarked date.

(b) If another state is paying your claim, mail your appeal directly to that state.

All appeal hearings will be conducted by the liable state by telephone. The liable state will notify you of the date, time, and telephone number of the hearing.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-15-069, § 192-110-010, filed 7/19/99, effective 8/19/99.]

WAC 192-110-015 Applications by partially unemployed or standby workers—RCW 50.04.310, 50.20.010, and 50.20.130. (1) Definitions:

(a) "Employer" means any person or business for which you work in exchange for wages.

(b) "Partially unemployed" means that during a week:

(i) You worked for your regular employer less than full time because of lack of work; and

(ii) You earned less than one and one-third times your weekly benefit amount plus five dollars.

(c) "Standby" means you are temporarily unemployed due to lack of work but expect to return to work with your regular employer.

(2005 Ed.)

(2) Your rights when you are partially unemployed:

(a) You may file your application or claim for benefits as many as five weeks after your hours are reduced without it being considered late.

(b) You do not have to register for work, however, you must accept all hours offered by your regular employer.

(3) Your rights when you are on standby:

(a) You can ask to be on standby for up to four weeks.

(b) You do not have to register for work.

(c) We will ask your employer to verify that you are on standby and your expected return to work date:

(i) If your employer does not respond, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby for up to four weeks or until the return to work date given by your employer, whichever is earlier;

(iii) If your employer responds that you are not on standby, you will be required to immediately register for work and to look for work.

(d) Your regular employer must request to extend your standby status for more than four weeks. This request is subject to approval by the department. We will consider the following before deciding whether to extend standby status for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-110-015, filed 4/5/99, effective 5/6/99.]

WAC 192-110-020 How will the department verify my identity? When you file your application for benefits, we will ask you questions based on information in our records, such as your work history.

(1) If we are able to verify your identity with these questions, your application for benefits will be filed.

(2) If we are not able to verify your identity through questioning, we will send you a verification request form:

(a) If the verification form is completed, returned to the department, and provides satisfactory evidence of your identity, your claim will be effective based on the date of your first telephone call;

(b) If the verification form is not completed and returned, or does not satisfy the department of your identity, your benefits will be denied.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-110-020, filed 4/5/99, effective 5/6/99.]

WAC 192-110-050 How do I reopen my claim? If you do not file a claim for one or more weeks, you must reopen your claim by placing a telephone call to the unemployment claims telecenter and asking to have your claim reopened. Benefits will be denied for any week preceding the week in which you reopened your claim, unless you can show good cause for not reopening your claim earlier.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-110-050, filed 4/5/99, effective 5/6/99.]

(2005 Ed.)

WAC 192-110-200 Maximum benefits payable—RCW 50.20.120 (1)(b). When the three month seasonally adjusted total unemployment rate reaches six and eight-tenths percent or less, the maximum benefits payable on a claim will be permanently reduced to 26 times an individual's weekly benefit amount or one-third of the individual's base year wages, whichever is less.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-110-200, filed 12/9/04, effective 1/9/05.]

WAC 192-110-210 Claim cancellation. If you choose to cancel a claim in order to refile with a new effective date, any nonmonetary eligibility decision issued under the canceled claim will be null and void. A new decision will be issued which addresses your eligibility for benefits based on the effective date of your new claim.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-110-210, filed 12/9/04, effective 1/9/05.]

Chapter 192-120 WAC

CLAIMANT NOTICES

WAC

192-120-001	Information for claimants.
192-120-010	Claimant information booklet.
192-120-020	Presentation of benefit rights.
192-120-030	Will I be told if my eligibility for benefits is questioned?
192-120-035	How will adequate notice be provided?
192-120-040	Will I be interviewed before a decision about my eligibility is made?
192-120-050	Conditional payment of benefits.

WAC 192-120-001 Information for claimants. (1)

The department will provide you with information necessary for filing your weekly claims for benefits.

(2) The department will provide assistance to any person who needs help in filing claims.

(3) You will be responsible for following written information provided by the department for the duration of your claim, and will be presumed to understand the information unless you ask for help in understanding it.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-120-001, filed 4/5/99, effective 5/6/99.]

WAC 192-120-010 Claimant information booklet.

(1) The department will publish an information for claimants booklet, form number EMS 8139, to provide basic information on the laws, rules and procedures about claims for unemployment insurance benefits. Single copies of the booklet will be available to the public at no charge.

(2) Each person who files an application for benefits will be mailed a copy of the most recent version of the information for claimants booklet.

(3) Each person who is mailed a copy of the information booklet will be responsible for filing claims in accordance with its instructions.

(4) A replacement booklet will be mailed to any person who requests one.

(5) Each person who is mailed a booklet is responsible for reporting and filing claims according to the information in the booklet for the duration of the claim unless other specific information is given to the person in writing.

(6) The department will assist any person who may have difficulty understanding the booklet.

(7) If you fail to ask for help in understanding the booklet, you will be presumed to understand its contents and held responsible for any failure to act as directed by the booklet.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-120-010, filed 4/5/99, effective 5/6/99.]

WAC 192-120-020 Presentation of benefit rights. (1)

When you file an application for benefits, the department will give you a presentation of benefit rights. At a minimum, the presentation of benefit rights will include information regarding:

(a) Your statement of wages and hours (monetary determination);

(b) Instructions on filing weekly claims;

(c) Reemployment services; and

(d) How eligibility questions are adjudicated.

(2) You will be responsible for filing claims and providing information as directed in the presentation of benefit rights unless other written instructions are given to you after the presentation of benefit rights.

(3) If there is a conflict between written and spoken information given to you, the written information will apply.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-120-020, filed 4/5/99, effective 5/6/99.]

WAC 192-120-030 Will I be told if my eligibility for benefits is questioned? Whenever we have a question regarding whether you (the claimant) are eligible for benefits, we will give you adequate notice before making a decision. "Adequate notice" means we will tell you:

(1) Why we question your eligibility for benefits;

(2) That you have the right to a fact-finding interview about your eligibility for benefits and that the interview will be conducted by telephone except:

(a) When you specifically ask to be interviewed in person, or

(b) In unusual circumstances where we decide an in-person interview is necessary;

(3) That you can have someone, including an attorney, assist you at the interview;

(4) That you can have witnesses on your behalf, provide evidence, and cross-examine other witnesses or parties;

(5) That, prior to the interview, you may ask for copies of any records or documents we have that we will consider in making a decision about your eligibility for benefits;

(6) The date by which you must reply to the notice (which will be no earlier than reasonable mailing time plus five working days); and

(7) That if you do not respond to the written notice by the date shown, your benefits may be denied and you may have to repay any benefits already paid to you.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-120-030, filed 4/5/99, effective 5/6/99.]

WAC 192-120-035 How will adequate notice be provided? (1) A written notice will be mailed to your most recent address in our files; or

(2) When you file your weekly claim for benefits by telephone, you will receive a verbal notice. If you do not reply by the last working day of the week in which your claim was filed, a written notice will be mailed to you. The date by which you must reply to this written notice will be no earlier than reasonable mailing time plus five working days, starting from the date your weekly claim for benefits was filed.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-120-035, filed 4/5/99, effective 5/6/99.]

WAC 192-120-040 Will I be interviewed before a decision about my eligibility is made? Before any decision is made regarding your eligibility for benefits, you will be given an opportunity to be heard. "Opportunity to be heard" is an offer to hold a fact-finding interview to resolve our questions about your (the claimant's) eligibility for benefits.

(1) At the interview, before you are asked to answer any questions, we will tell you all the facts we have that we will consider in making a decision.

(2) We will not use any facts received after the interview to make our decision unless:

(a) We tell you about the new information, and

(b) Give you the chance to respond to the new information.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-120-040, filed 4/5/99, effective 5/6/99.]

WAC 192-120-050 Conditional payment of benefits.

(1) If you are a continued claim recipient and your eligibility for benefits is questioned by the department, you will be conditionally paid benefits without delay for any week(s) for which you file a claim for benefits, until and unless you have been provided adequate notice and an opportunity to be heard.

(2) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-120-050, filed 12/9/04, effective 1/9/05.]

Chapter 192-130 WAC

EMPLOYER NOTICES

WAC

192-130-050	Notice of filing of application—RCW 50.20.150.
192-130-060	Notice to employer.
192-130-065	Mailing addresses for notice to employer.
192-130-070	Mailing of eligibility determinations—RCW 50.20.180.
192-130-080	Procedure—Separation issues.

WAC 192-130-050 Notice of filing of application—RCW 50.20.150. (1) Whenever an individual files an initial application for unemployment benefits, or reopens a claim after subsequent employment, a notice will be mailed to the applicant's most recent employer as stated by the applicant. Any employer who receives such a notice and has information which might make the applicant ineligible for benefits shall report this information to the employment security department at the address indicated on the notice within ten days of the date the notice was mailed. If the employer does not reply within ten days, the department may allow benefits to the individual, if he or she is otherwise eligible.

(2) If an employer reports information which it claims makes an individual ineligible for benefits, the department will issue a written decision regarding the individual's eligibility and mail a copy to the employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 98-14-068, § 192-130-050, filed 6/30/98, effective 7/31/98.]

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to:

(a) The claimant's last employer, and

(b) Any prior employer from whom the claimant has a potentially disqualifying separation where there is insufficient subsequent employment to purge a separation disqualification. An individual will be presumed to have a potentially disqualifying separation when:

(i) For claims with an effective date prior to January 4, 2004, it has been less than seven weeks or the individual has not earned at least seven times his or her weekly benefit amount since the job separation; or

(ii) For claims with an effective date January 4, 2004, and later, it has been less than ten weeks or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, a notice will be mailed to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be lia-

ble for all benefits paid on the claim as provided in RCW 50.29.021 (2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), a notice will be mailed to the last employer reported by the claimant and to any prior employer from whom the claimant has a potentially disqualifying separation who has not previously been notified.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-130-060, filed 12/9/04, effective 1/9/05.]

WAC 192-130-065 Mailing addresses for notice to employer. Notices to employers required by RCW 50.20.150 and WAC 192-130-060 will be mailed as follows:

(1) The notice to the last employer of the claimant will be mailed to the address provided by the claimant. However, an alternative mailing address may be used in the following circumstances:

(a) If the department has been notified that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the notice to the last employer may be mailed directly to that firm; or

(b) If an employer has notified the department that unemployment claim notices should be mailed to a specified address, the notice to the last employer may be mailed directly to that address.

(2) The notice to any base year employer who has reported wages to the department will be mailed to the employer's mailing address of record provided by the employer for tax purposes.

(3) The notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be mailed to the address provided by the claimant.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-130-065, filed 12/9/04, effective 1/9/05.]

WAC 192-130-070 Mailing of eligibility determinations—RCW 50.20.180. (1) An eligibility determination based on a job separation issue will be mailed to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) For claims with an effective date prior to January 4, 2004, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for a felony or gross misdemeanor connected with the work;

(d) For claims with an effective date of January 4, 2004 or later, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct.

(2) An eligibility determination based on an issue other than a separation from employment will be mailed to an employer if the employer provides relevant information relating to eligibility for a specific week.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-130-070, filed 12/9/04, effective 1/9/05.]

WAC 192-130-080 Procedure—Separation issues.

(1) No decision on a separation issue (RCW 50.20.050, 50.20.060, 50.20.066) will be issued until both parties to the separation have had an opportunity to present information and rebuttal, if necessary and appropriate, on the matters at issue.

(2) If an employer does not respond within ten days to the notice required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the department receives information from the employer after the end of the ten day response period, but before the decision has been made, the information provided by the employer will be considered before making the decision if the information was mailed to the unemployment claims telecenter identified on the notice.

(4) If the department receives information from the employer after the end of the ten day period and within thirty days following the mailing of a decision, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the mailing of the notice required by WAC 192-130-060 will be considered a request for relief of benefit charges under RCW 50.29.020 or 50.29.021.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-130-080, filed 12/9/04, effective 1/9/05.]

Chapter 192-140 WAC

REPORTING REQUIREMENTS TO RECEIVE BENEFITS

WAC

192-140-005	Filing weekly claims for benefits.
192-140-010	Personal identification number.
192-140-020	Will I be required to report in person?
192-140-025	What does "failure to respond" mean?
192-140-030	What happens if I do not report in person when directed?
192-140-070	What happens if I do not establish that I am able to or available for work?
192-140-075	What happens if I do not demonstrate that I am actively looking for work?
192-140-080	What happens if I do not comply with a job search directive?
192-140-085	What happens if I do not respond to a request for information regarding late claim(s)?
192-140-090	What happens if I do not report for reemployment services as provided in RCW 50.20.010 (1)(e)?
192-140-100	What happens if I do not respond to a request for information regarding a discharge from work?
192-140-120	What happens if I do not provide information regarding attendance at school?
192-140-200	What happens if I certify that I am not able to or available for work?
192-140-210	What happens if I return to full-time work or report hours worked consistent with full-time work?

WAC 192-140-005 Filing weekly claims for benefits.

(1) **How do I file my weekly claim for benefits?** You may file your claim by placing a telephone call to the unemployment information and weekly claims line. The department can approve other methods of filing a weekly claim in individual circumstances.

(2) **When do I file my claim?** You must file a claim for every week for which you want to be paid or have counted as your waiting week. Every week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. Your claim must be filed *after* the end of the week(s) you are claiming.

(a) File your telephone claim after 12:01 a.m. Sunday, but before 5:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before 5:00 p.m. on the last working day of the week.)

(b) If you file by mail, file your claim anytime Sunday through Saturday following the week you are claiming. Your claim is considered filed on the postmarked date.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) **What happens if I miss a week?** If you do not claim a week, you will have to contact the unemployment claims telecenter to reopen your claim.

(5) **What information do I have to report?** Your claim must include:

(a) The Saturday date of the week you are claiming;

(b) Answers to the questions:

(i) A claim filed by telephone cannot be processed unless all questions are answered;

(ii) A claim filed in writing will be processed if at least one question is answered and other information required by this subsection (5) is provided, but your eligibility for benefits will be in question and you will be asked to provide complete information, which could result in a denial of benefits;

(c) Your personal identification number if filing by telephone, or your signature if you filed your claim in writing;

(d) The amount and source of any pension you are receiving for the week claimed;

(e) Any holiday earnings received during the week claimed;

(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and

(g) Any earnings and the number of hours you worked during the week claimed.

(6) What happens if I don't provide this information?

A telephone claim that does not meet the requirements of subsection (5) cannot be processed and you will receive verbal instructions to contact your unemployment claims telecenter. A written claim that does not meet these requirements is incomplete and will be returned to you with a request for additional information.

(7) What happens if I file my claim late?

(a) Until you receive your first payment, your claim is late if it is filed more than seven days (one week) after the Saturday of the week being claimed. You will not be paid for these weeks unless you can prove you had a good reason for filing late.

(b) After you have received your first payment, your claim is late if it is filed more than 28 days (four weeks) after the Saturday of the week being claimed. Any week that is filed late may be conditionally paid. This means you will be paid benefits, but you will be asked to prove you had a good reason for filing late. If you cannot do so, you will receive a notice directing you to repay benefits for the week(s) you filed late.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-005, filed 4/5/99, effective 5/6/99.]

WAC 192-140-010 Personal identification number.

(1) The first time you call the unemployment information and weekly claims line to obtain information about your claim or to file a weekly claim for benefits, you must establish a personal identification number (PIN). This number is your electronic signature on all claims filed by telephone and its use is equivalent to your signature on written forms.

(2) Security of the PIN is your responsibility. You are responsible for any payments made as a result of the use of this PIN. If you forget your PIN or if someone else, including an employee of the department, learns your PIN, it must be reset. You are responsible for contacting the unemployment claims telecenter to establish a new PIN.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-010, filed 4/5/99, effective 5/6/99.]

WAC 192-140-020 Will I be required to report in person? You may be instructed to report in person for any

reason the department deems necessary, such as to receive reemployment services. If you do not report in person, benefits will be denied for the week unless:

(1) You have returned to full-time work and cannot report in person, or

(2) You can show you had good cause for not reporting in person. "Good cause" is any factor which would cause another person in similar circumstances to be unable to report in person.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-020, filed 4/5/99, effective 5/6/99.]

WAC 192-140-025 What does "failure to respond" mean? (1) "Failure to respond" means you do not report in person when directed to do so, or do not provide all requested information by the date indicated in a written request for information.

(2) If the request for information requires you to report in person and you respond in writing, you will be deemed to have failed to respond unless your written response provides specific information that will establish good cause for not reporting in person.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-025, filed 4/5/99, effective 5/6/99.]

WAC 192-140-030 What happens if I do not report in person when directed? (1) If you do not report in person when directed to do so, and do not provide information to explain why you did not report in person, the department will presume you failed to report in person without good cause and benefits will be denied under RCW 50.20.010(1).

(2) This denial of benefits is for definite period of time, which is the week or weeks in which you failed to report in person.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-030, filed 4/5/99, effective 5/6/99.]

WAC 192-140-070 What happens if I do not establish that I am able to or available for work? (1) If you report that you were not able to work or not available for work in any week or do not report whether you were able to work or were available for work, and do not provide details regarding your ability to or availability for work as requested, the department will presume you are not able or not available for work and benefits will be denied under RCW 50.20.010 (1)(c).

This denial is for a definite period of time, which is the week or weeks in which information on your ability to work or availability for work is incomplete.

(2) If you provide information that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed, and you do not provide information regarding your ability to or availability for work, benefits will be denied under RCW 50.20.010 (1)(c).

This denial is for an indefinite period of time. It will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-070, filed 12/9/04, effective 1/9/05.]

(2005 Ed.)

WAC 192-140-075 What happens if I do not demonstrate that I am actively looking for work? (1) If you report that you were not actively seeking work in any week or do not report whether you made an active search for work and subsequently fail to report complete job search details and other information when requested, the department will presume you are not actively seeking work and your benefits will be denied under RCW 50.20.010 (1)(c).

(2) For the purpose of this section, "complete job search details" includes those elements required under WAC 192-180-015.

(3) This denial is for a definite period of time, which is the week or weeks in which your job search information is incomplete.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-075, filed 12/9/04, effective 1/9/05.]

WAC 192-140-080 What happens if I do not comply with a job search directive? (1) If you have been issued a job search directive as provided in WAC 192-180-010, do not report a job search that meets the requirements outlined in the directive, and you do not provide additional job search information as requested or you respond with information that does not meet these requirements, the department will presume you are not actively seeking work as directed and benefits will be denied under RCW 50.20.010 (1)(c).

(2) This denial is for a definite period of time, which is the week or weeks in which your job search information does not meet the specific requirements of the directive.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-080, filed 12/9/04, effective 1/9/05.]

WAC 192-140-085 What happens if I do not respond to a request for information regarding late claim(s)? (1) If you file a claim late as defined in WAC 192-140-005 and do not respond to a request for an explanation of why the claim was filed late, the department will presume that the claim was filed late without good cause and benefits will be denied under RCW 50.20.010 (1)(b) and WAC 192-140-005.

(2) This denial is for a definite period of time, which is the week or weeks that were filed late.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-085, filed 12/9/04, effective 1/9/05.]

WAC 192-140-090 What happens if I do not report for reemployment services as provided in RCW 50.20.010 (1)(e)? The commissioner may direct you in writing to report in person for reemployment services.

(1) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member in good standing of a full referral union;

(b) Are attached to an employer as provided in WAC 192-180-005; or

(c) Within the previous year have completed, or are currently scheduled for or participating in, similar services.

(2) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

- (d) Self assessment of job skills and interests;
- (e) Job interview techniques;
- (f) The development of a resume or fact sheet; and
- (g) The development of a plan for reemployment.

(3) **Sanctions.** If you have received a directive, and fail to participate in reemployment services during a week, you will be disqualified from benefits for that week unless justifiable cause is demonstrated.

(4) **Justifiable cause.** Justifiable cause for failure to participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to participate. Justifiable cause includes, but is not limited to:

- (a) Your illness or disability or that of a member of your immediate family;
- (b) Your presence at a job interview scheduled with an employer; or
- (c) Severe weather conditions precluding safe travel.

Reasons for absence may be verified. In all such cases, your ability to or availability for work is in question.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-090, filed 12/9/04, effective 1/9/05.]

WAC 192-140-100 What happens if I do not respond to a request for information regarding a discharge from work? (1) If you do not respond to a request for information regarding a discharge from work or have not provided sufficient information to identify or contact the employer, the department will presume you were discharged for misconduct connected with the work. For claims with an effective date prior to January 4, 2004, benefits will be denied under RCW 50.20.060. For claims with an effective date of January 4, 2004, and later, benefits will be denied under RCW 50.20.066. If you have provided the department with sufficient information to contact the employer, benefits will not be denied unless the employer establishes by a preponderance of evidence that you were discharged for misconduct connected with your work.

(2) This denial is for an indefinite period of time and will continue until you meet the requalification provisions of RCW 50.20.060 or 50.20.066, as applicable.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-100, filed 12/9/04, effective 1/9/05.]

WAC 192-140-120 What happens if I do not provide information regarding attendance at school? (1) If you or another party notifies the department that you are in school and you do not respond to a request for information regarding school attendance, the department will presume that you are registered for academic instruction of 12 or more credit hours and have a limited attachment to the labor market, and are not available for work. Benefits will be denied under RCW 50.20.095 and 50.20.010 (1)(c).

(2) This denial of benefits is indefinite in nature and will continue until you establish that you are eligible under RCW 50.20.095 and 50.20.010 (1)(c).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-120, filed 12/9/04, effective 1/9/05.]

WAC 192-140-200 What happens if I certify that I am not able to or available for work? (1) Benefits will be reduced under RCW 50.20.010 (1)(c) and 50.20.130 without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work on one or two days of a week or weeks being claimed; and

(b) The day or days to which this condition applies are normal working days in your regular occupation; and

(c) The information supplied clearly supports this finding.

This denial is for a definite period of time and applies only to the day or days for which you specifically indicate you are ineligible for benefits.

(2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and

(b) The days to which this condition applies are normal working days in your regular occupation; and

(c) The information supplied clearly supports this finding.

This denial for a definite period of time and applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.

(3) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed.

This denial is for an indefinite period of time. It will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

(4) If you file a weekly claim with information clearly stating that you do not intend to claim benefits for the week or weeks, benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview.

This denial is for a specific period of time, which is the week or weeks for which you specifically indicate you do not intend to claim benefits.

(5) Any denial of benefits under this section will be issued without delay.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-200, filed 12/9/04, effective 1/9/05.]

WAC 192-140-210 What happens if I return to full-time work or report hours worked consistent with full-time work? If you report that you have returned to full-time work or report hours worked that are consistent with full-time work for that occupation, this information is sufficient to find that you are no longer an unemployed individual as defined in RCW 50.04.310. This denial is for a specific period of time, which is the week or weeks for which you report full-time work or hours consistent with full-time work.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-210, filed 12/9/04, effective 1/9/05.]

Chapter 192-150 WAC

JOB SEPARATIONS

WAC	
192-150-050	Leaving work to accept bona fide job offer—RCW 50.20.050 (1)(b)(i) and (2)(b)(i).
192-150-055	Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii).
192-150-060	Leaving work because of disability—Notice to employer—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii).
192-150-065	What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 (1)(b)(iii)?
192-150-085	How to qualify after benefits have been denied.
192-150-090	How to qualify for benefits after leaving work for marital or domestic reasons.
192-150-100	Employer-initiated layoffs or reductions in force.
192-150-110	Mandatory military transfers—RCW 50.20.050 (2)(b)(iii).
192-150-115	Reduction in compensation of twenty-five percent or more—RCW 50.20.050 (2)(b)(v).
192-150-120	Reduction in hours of twenty-five percent or more—RCW 50.20.050 (2)(b)(vi).
192-150-125	Change in worksite—RCW 50.20.050 (2)(b)(vii).
192-150-130	Worksite safety—RCW 50.22.050 (2)(b)(viii).
192-150-135	Illegal activities at the worksite—RCW 50.20.050 (2)(b)(ix).
192-150-140	Change in usual work that violates religious or sincere moral beliefs—RCW 50.20.050 (2)(b)(x).
192-150-150	When is a separation considered a refusal of new work?
192-150-200	General provisions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.
192-150-205	Definitions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.
192-150-210	Willful or wanton disregard—RCW 50.04.294 (1)(a) and (2).
192-150-215	Discharges for felony or gross misdemeanor or for gross misconduct—Responsibility for providing information.
192-150-220	Discharges for gross misconduct or for felony or gross misdemeanor.

WAC 192-150-050 Leaving work to accept bona fide job offer—RCW 50.20.050 (1)(b)(i) and (2)(b)(i). If you leave work to accept a bona fide offer of employment, you will have good cause within the meaning of RCW 50.20.050 if you satisfactorily demonstrate that:

- (1) Prior to leaving work, you received a definite offer of employment; and
- (2) You had a reasonable basis for believing that the person making the offer had the authority to do so; and
- (3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and
- (4) You continued in your previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job; and
- (5) The new job is in employment covered by Title 50 RCW or the comparable laws of another state or the federal government.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-050, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-150-050, filed 5/16/01, effective 6/16/01.]

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW

(2005 Ed.)

50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

- (a) You left work primarily because of such illness, disability, or death; and
- (b) The illness, disability, or death made it necessary for you to leave work; and
- (c) You first exhausted all reasonable alternatives prior to leaving work, including:
 - (i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and
 - (ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

- (a) "Disability" means a sensory, mental, or physical condition that:
 - (i) Is medically recognizable or diagnosable;
 - (ii) Exists as a record or history; and
 - (iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, children (including unborn children), step-children, foster children, or parents of either spouse, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

WAC 192-150-060 Leaving work because of disability—Notice to employer—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) If you leave work because of a disability you must notify your employer about your disabling condition before the date you leave work or begin a leave of absence. Notice to the employer shall include any known restrictions on the type or hours of work you may perform.

[Title 192 WAC—p. 53]

(2) Any restrictions on the type or hours of work you may perform must be supported by a physician's statement or by the terms of a collective bargaining agreement or individual hiring contract.

(3) Nothing in unemployment insurance law requires your employer to offer you alternative suitable work when you have a disability, or modify your duties so that you can perform your current job. However, any offer from your employer of other suitable work must be made prior to the date you leave work or begin a leave of absence. You are not required to request alternative work from your employer to be found available for work.

(4) If your employer offers you alternative work or otherwise offers to accommodate your disability, you must demonstrate good cause to refuse the offer. This may include, but is not limited to, information from your physician that the accommodation offered by your employer was inadequate to reasonably accommodate your medical condition, or information demonstrating that the alternative work offered you by your employer was not suitable.

(5) If you refuse an offer of work from any employer after your job separation or after beginning a leave of absence, the department will determine whether you refused an offer of suitable work as provided in RCW 50.20.080.

(6) If you are on a leave of absence due to your disability, you must promptly request reemployment from your employer when you are again able to return to work.

(7) This section also applies to individuals on a leave of absence because of a pregnancy-related disability.

(8) For claims with an effective date of January 4, 2004, or later, in addition to the requirements of this section you are not eligible for unemployment benefits unless you terminate your employment and are not entitled to be reinstated to the same or similar position.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-060, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. 02-08-072, § 192-150-060, filed 4/2/02, effective 5/3/02.]

WAC 192-150-065 What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 (1)(b)(iii)? (1) This section applies only to claims with an effective date prior to January 4, 2004.

(2) If your spouse's employer requires your spouse to relocate to another labor market area to retain a current job or to accept another job with that employer, the relocation will be considered an employer-initiated mandatory transfer. Examples of employer-initiated mandatory transfers include, but are not limited to:

(a) A plant closure where employees must move to another labor market area to continue employment with that employer;

(b) A change in job responsibilities, such as a promotion, with that same employer where the employer requires a move to another labor market area; or

(c) A restructuring of business operations by the employer requiring employees to move to another labor market area if they want to continue in their customary occupation.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-065, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW

50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-150-065, filed 5/16/01, effective 6/16/01.]

WAC 192-150-085 How to qualify after benefits have been denied. (1) Benefits may be denied under RCW 50.20.050 for voluntarily leaving work, RCW 50.20.060 for being discharged for misconduct, and RCW 50.20.080 for refusing an offer of suitable work or job referral. The denial of benefits will continue indefinitely until you show that:

(a) At least seven calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

(b) You have obtained bona fide work and earned wages of at least seven times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

(2) For claims with an effective date of January 4, 2004, or later, benefits may be denied under RCW 50.20.066 for being discharged for misconduct or gross misconduct. The denial of benefits will continue indefinitely until you show that:

(a) At least ten calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

(b) You have obtained bona fide work and earned wages of at least ten times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-085, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-150-085, filed 5/16/01, effective 6/16/01.]

WAC 192-150-090 How to qualify for benefits after leaving work for marital or domestic reasons. This section applies only to claims with an effective date prior to January 4, 2004. RCW 50.20.050 (1)(d) says that benefits will be denied if you quit your job for family reasons. In such cases, the law provides an alternative means for qualifying for benefits other than through work and earnings. Under this alternative method, you must report in person to your Work-Source office or local employment center in ten different weeks and establish that you are able to work, available for work, and actively seeking work each week.

If you are an interstate claimant or living in a remote area, you can qualify for benefits under this alternative method by calling the unemployment information and weekly claims line in each of ten different weeks and certifying that you are able to work, available for work, and actively seeking work each week. For purposes of this section, you are living in a remote area if a round trip of more than two hours by reasonably available public or private transportation is required to reach the nearest local employment center and return.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-090, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-150-090, filed 4/5/99, effective 5/6/99.]

WAC 192-150-100 Employer-initiated layoffs or reductions in force. (1) You will not be considered to have been separated from employment for a disqualifying reason when:

(a) Your employer takes the first action in the separation process by announcing in writing to its employees that:

(i) The employer plans to reduce its work force through a layoff or reduction in force, and

(ii) That employees can offer to be among those included in the layoff or reduction in force;

(b) You offer to be one of the employees included in the layoff or reduction in force; and

(c) Your employer takes the final action in the separation process by accepting your offer to be one of the employees included in the layoff or reduction in force, thereby ending your employment relationship.

(2) This section does not apply to situations where an employer modifies benefits or otherwise encourages early retirement or early separation, but the employer and employee do not follow the steps in subsection (1)(a) through (c).

[Statutory Authority: RCW 50.12.010, 50.12.040, 01-12-009, § 192-150-100, filed 5/24/01, effective 6/24/01.]

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (2)(b)(iii). (1) Any military transfer will be considered mandatory if your spouse receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may establish good cause to quit work if you relocate for your spouse's employment that was due to a mandatory military transfer if:

(a) Your spouse's new duty station is outside your existing labor market and in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued in your previous employment for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) The department will maintain a list of states that allow unemployment benefits to an individual who quits to accompany a military spouse. This list will be updated at least annually.

(5) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse to a new duty location; or

(b) Your spouse leaves military service and you elect to relocate to your home of record or elsewhere.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-150-110, filed 12/9/04, effective 1/9/05.]

(2005 Ed.)

WAC 192-150-115 Reduction in compensation of twenty-five percent or more—RCW 50.20.050 (2)(b)(v). (1) "Compensation" means remuneration as defined in RCW 50.04.320.

(2) "Usual" includes amounts actually paid to you by your employer or, if payment has not yet been made, the compensation agreed upon by you and your employer as part of your hiring agreement.

(3) To constitute good cause for quitting work under this section, employer action must have caused the reduction in your usual compensation.

(4) All reductions in compensation occurring since the beginning of your base period to the date of separation will be included in the determination as to whether your compensation was reduced by twenty-five percent or more.

(5) The percentage of reduction will be based on your most recent pay grade, salary, or other benefits you received or have accepted on a permanent basis. It does not include any temporary raises or other compensation for performing temporary duties.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-150-115, filed 12/9/04, effective 1/9/05.]

WAC 192-150-120 Reduction in hours of twenty-five percent or more—RCW 50.20.050 (2)(b)(vi). (1) Your "usual hours" will be determined based on:

(a) The hours of work agreed on by you and your employer as part of your individual hiring agreement;

(b) For seasonal jobs, the number of hours you customarily work during the season; or

(c) For piecework, the number of hours you customarily work to complete a fixed volume of work.

(2) To constitute good cause for quitting under this section, employer action must have caused the reduction in your usual hours.

(3) All reductions in hours occurring since the beginning of your base period through the date of separation will be included in the determination as to whether your hours were reduced by twenty-five percent or more.

(4) In determining the percentage of reduction, the department will not consider any temporary overtime or additional hours performed on a temporary basis.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-150-120, filed 12/9/04, effective 1/9/05.]

WAC 192-150-125 Change in worksite—RCW 50.20.050 (2)(b)(vii). (1) The location of your employment must have changed due to employer action. The change must have:

(a) Substantially increased the distance you travel to the new worksite or increased the difficulty or inconvenience of travel; and

(b) Resulted in a commute distance or time that is greater than is customary for workers in your job classification and labor market area.

(2) For purposes of this section:

(a) "Job classification" means your occupation at the time you quit work;

(b) "Labor market area" means the geographic area in which workers in your location and occupation customarily work. In determining whether a labor union's jurisdictional

area is consistent with an individual member's labor market, the department will determine where the majority of union members in that member's location and occupation customarily work.

(3) Good cause for quitting work cannot be established under this section if the worksite location and distance to work was known at the time of hire.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-125, filed 12/9/04, effective 1/9/05.]

WAC 192-150-130 Worksite safety—RCW 50.22.050 (2)(b)(viii). (1) At the time of hire, you can reasonably expect that your worksite complies with applicable federal and state health and safety regulations. If, after beginning work or accepting the job offer, you become aware of a safety issue that was not previously disclosed by your employer, the department will consider the safety of the worksite to have deteriorated.

(2) To establish good cause for quitting work under this section, you must notify your employer of the safety issue and give your employer a reasonable period of time to correct the situation. For purposes of this section:

(a) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the safety condition at issue;

(b) "Reasonable period of time" means the amount of time a reasonably prudent person would have remained at the worksite or continued working in the presence of the condition at issue. In addition:

(i) For health or safety issues that present imminent danger of serious bodily injury or death to any person, your employer must take immediate steps to correct the situation;

(ii) If your employer has been issued a citation by a regulatory agency charged with monitoring health or safety conditions, the employer must correct the condition within the time period specified in the citation.

(c) "Serious bodily injury" means bodily injury which creates a probability of death, or which causes serious permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ whether permanent or temporary.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-130, filed 12/9/04, effective 1/9/05.]

WAC 192-150-135 Illegal activities at the worksite—RCW 50.20.050 (2)(b)(ix). (1) Illegal activities include violations of both civil and criminal law.

(2) To establish good cause for quitting work under this section, you must notify your employer of the illegal activity and give your employer a reasonable period of time to correct the situation. You are not required to notify your employer before quitting when your employer is conducting the illegal activity and notifying your employer could jeopardize your safety or is contrary to other federal and state laws (for example, whistleblower protection laws).

(3) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the illegal activity at issue;

(4) A "reasonable period of time" is the period a reasonably prudent person would be expected to continue working in the presence of the activity at issue.

[Title 192 WAC—p. 56]

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-135, filed 12/9/04, effective 1/9/05.]

WAC 192-150-140 Change in usual work that violates religious or sincere moral beliefs—RCW 50.20.050 (2)(b)(x). (1) For purposes of this section, "usual work" means job duties or conditions:

(a) Originally agreed upon by you and your employer in your hiring agreement; or

(b) Customary for workers in your job classification; or

(c) You consistently performed during your base period; or

(d) Mutually agreed to by you and your employer prior to the employer action changing your job duties.

(2) The following criteria will be used to determine whether you had good cause for quitting work under this section:

(a) The change in your usual work must be the result of action taken by your employer;

(b) The work must require you to violate your religious beliefs or sincere moral convictions; mere disapproval of the employer's method of conducting business is not good cause for leaving work under this section;

(c) You must notify your employer that the work violates your religion or sincere moral beliefs, unless doing so would be futile;

(d) The work or activity must directly, rather than indirectly, affect your religious or moral beliefs; and

(e) The objectionable condition must exist in fact, rather than be a matter of speculation.

(3) You will not have good cause for quitting work under this section if:

(a) You are inconsistent or insincere in your objections;

(b) The objection is raised as a sham or a means of avoiding work; or

(c) You knew of the objectionable aspects of the work at the time of hire, or you continued working under the objectionable conditions longer than a reasonably prudent person holding similar beliefs would have continued.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-140, filed 12/9/04, effective 1/9/05.]

WAC 192-150-150 When is a separation considered a refusal of new work? (1) Section 3304 (a)(5) of the Federal Unemployment Tax Act and RCW 50.20.110 prohibit the denial of benefits to individuals who refuse to accept new work when the wages, hours, or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality.

(2) For purposes of this chapter, "new work" includes an offer by your present employer of:

(a) Different duties than those you agreed to perform in your current employment contract or agreement; or

(b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When your employer changes your pay, hours, or conditions of work in a manner that does not constitute good cause under RCW 50.20.050(2), the department will determine whether the change constitutes an offer of new work. If it does, the department will also determine if the new work is

(2005 Ed.)

substantially less favorable than similar work in your labor market area.

(a) If the department determines the change constitutes an offer of new work, and the new work is substantially less favorable, the separation will be treated as a layoff due to lack of work and the issue of the refusal of new work adjudicated under RCW 50.20.080.

(i) The refusal of new work will be adjudicated even if you have not claimed benefits for the week in which the refusal occurred; and

(ii) The employer offering the new work is an interested party to the work refusal decision.

(b) If the department determines the change does not constitute an offer of new work, or the new work is not substantially less favorable, the separation from work will be adjudicated as a voluntary quit under RCW 50.20.050(2).

(4) If the reduction in your pay or hours is ten percent or less, the department will presume that it is not substantially less favorable and adjudicate the separation under RCW 50.20.050(2). You can overcome this presumption by providing additional information to the department to support a finding that the job was not suitable as provided in RCW 50.20.110.

(5) If you continue working for your employer after being notified of the change(s) in working conditions, the department will consider that you have agreed to the new terms and conditions of employment and have accepted the offer of new work. If you subsequently quit work because of these changes, the department will consider that you have voluntarily left work for personal reasons. This provision does not apply when you give notice of your intent to quit work upon being notified of the change(s) in working conditions and simply continue to work during an agreed upon notice period. In addition, you may continue working during an employer-provided grievance or arbitration period in response to the change in working conditions without the department considering that you have accepted the new work.

(6) For purposes of this section, the following definitions apply:

(a) "Conditions of work" includes fringe benefits such as life and health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) "Prevailing" means the most typical or customary in a particular occupation for a given area. Whether a wage rate is prevailing for your labor market area will be determined based on information provided by the department's labor market and economic analysis branch.

(c) "Similar work" means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) "Substantially less favorable" means the work is materially reduced below the standard under which the majority of individuals in your occupation and labor market

(2005 Ed.)

area customarily work, or the work would have a significantly unfavorable impact on you.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-150, filed 12/9/04, effective 1/9/05.]

WAC 192-150-200 General provisions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.

(1) The action or behavior that resulted in your discharge or suspension from employment must be connected with your work to constitute misconduct or gross misconduct.

(2) The action or behavior must result in harm or create the potential for harm to your employer's interests. This harm may be tangible, such as damage to equipment or property, or intangible, such as damage to your employer's reputation or a negative impact on staff morale.

(3) RCW 50.04.294, subsections (1)(c) and (3)(b), will be distinguished as follows:

(a) Subsection (1)(c) "Carelessness or negligence that causes or would likely cause serious bodily harm to your employer or fellow employee" means that your action results in serious bodily injury or a reasonably prudent person would know it is likely to result in serious bodily injury.

(b) Subsection (3)(b) "Inadvertence or ordinary negligence in isolated instances" means that your action is an accident or mistake and is not likely to result in serious bodily injury.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-200, filed 12/9/04, effective 1/9/05.]

WAC 192-150-205 Definitions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066. For purposes of this chapter, the following definitions will apply:

(1) "Willful" means intentional behavior done deliberately or knowingly, where you are aware that you are violating or disregarding the rights of your employer or a co-worker.

(2) "Wanton" means malicious behavior showing extreme indifference to a risk, injury, or harm to another that is known or should have been known to you. It includes a failure to act when there is a duty to do so, knowing that injury could result.

(3) "Carelessness" and "negligence" mean failure to exercise the care that a reasonably prudent person usually exercises.

(4) "Serious bodily harm" means bodily injury which creates a probability of death, or which causes significant permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ.

(5) "Criminal act" means any act classified as a felony, gross misdemeanor, or misdemeanor under state or federal law.

(6) "Flagrant" means conspicuously bad or offensive behavior showing contemptuous disregard for the law, morality, or the rights of others. This blatant behavior must be so obviously inconsistent with what is right or proper that it can neither escape notice nor be condoned.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-205, filed 12/9/04, effective 1/9/05.]

WAC 192-150-210 Willful or wanton disregard—RCW 50.04.294 (1)(a) and (2). (1) "Repeated inexcusable tardiness" means repeated instances of tardiness that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be tardy. Your employer must have warned you at least twice, either verbally or in writing, about your tardiness, and violation of such warnings must have been the immediate cause of your discharge.

(2) "Dishonesty related to employment" means the intent to deceive the employer on a material fact. It includes, but is not limited to, making a false statement on an employment application and falsifying the employer's records.

(3) "Repeated and inexcusable absences" means repeated absences that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be absent. Previous warnings from your employer are not required, but your repeated absences must have been the immediate cause of your discharge.

(4) A company rule is reasonable if it is related to your job duties, is a normal business requirement or practice for your occupation or industry, or is required by law or regulation.

(5) The department will find that you knew or should have known about a company rule if you were provided an employee orientation on company rules, you were provided a copy or summary of the rule in writing, or the rule is posted in an area that is normally frequented by you and your co-workers, and the rule is conveyed or posted in a language that can be understood by you.

(6) You are considered to be acting within your "scope of employment" if you are:

- (a) Representing your employer in an official capacity;
- (b) On your employer's property whether on duty or not;
- (c) Operating equipment under your employer's ownership or control;
- (d) Delivering products or goods on behalf of your employer; or
- (e) Acting in any other capacity at the direction of your employer.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-210, filed 12/9/04, effective 1/9/05.]

WAC 192-150-215 Discharges for felony or gross misdemeanor or for gross misconduct—Responsibility for providing information. In any job separation where there is a potential disqualification under RCW 50.20.065 or 50.20.066, the employer is responsible for notifying the department in a timely manner of any resolution of issues.

If an employer notifies the department of a potential disqualification under RCW 50.20.065 or 50.20.066 within ten days of receiving the notice required by WAC 192-130-060, the department will review the claimant's eligibility for benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-215, filed 12/9/04, effective 1/9/05.]

WAC 192-150-220 Discharges for gross misconduct or for felony or gross misdemeanor. (1) **Effective dates.** The provisions of RCW 50.20.065 will apply to claims with an effective date prior to January 4, 2004. The provisions of

RCW 50.20.066 will apply to claims with an effective date of January 4, 2004, and thereafter.

(2) **Definitions.**

(a) "Criminal act" means every action defined as a crime by the applicable state or federal statutes, including felonies and gross misdemeanors.

(b) "Felony" means every crime that is defined as such by the applicable state or federal statutes.

(c) "Gross misdemeanor" means every crime which is defined as such by the applicable state or federal statutes.

(d) A "competent authority" is:

- (i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or
 - (ii) An administrative law judge; or
 - (iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or
 - (iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.
- (e) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW 50.20.065 and 50.20.066.

(3) **Canceling wage credits.**

(a) For claims with an effective date prior to January 4, 2004: If you have been discharged because of a felony or gross misdemeanor connected with your work of which you have been convicted or have admitted committing, all your hourly wage credits based on that employment since the beginning of your base period will be canceled.

(b) For claims with an effective date of January 4, 2004, and later: If you have been discharged for gross misconduct connected with your work:

(i) All your hourly wage credits based on that employment since the beginning of your base period will be canceled;

(ii) If your wage credits with this employer are fewer than 680 hours, the balance of wage credits up to 680 hours will be canceled proportionately among your base period employers according to each employer's share of your base period wages. Wages from each employer will be removed from the most recent quarter in which wages were reported.

(c) Wage credits may only be canceled based upon an admission of a criminal act if:

(i) You admit to each and every element of a criminal act which caused you to be discharged; and

(ii) The admission is made to a competent authority.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-220, filed 12/9/04, effective 1/9/05.]

Chapter 192-170 WAC

AVAILABILITY FOR WORK

WAC

192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110.

WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110. (1) **Physical fitness.** In determining whether work is suitable as defined by RCW 50.20.100 and RCW 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

(a) For purposes of this section, the term "disability" means a sensory, mental, or physical condition that:

- (i) Is medically recognizable or diagnosable;
- (ii) Exists as a record or history; and
- (iii) Substantially limits the proper performance of your job.

(b) The department may determine in individual circumstances that less than full-time work is suitable if:

- (i) The disability prevents you from working the number of hours that are customary to the occupation;
- (ii) You are actively seeking work for the occupation and hours you have the ability to perform; and
- (iii) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.

(c) To be considered available for suitable work, you must be available for employment in an occupation in keeping with your prior work experience, education, or training. If such employment is not available in your general area, you must be willing to accept any employment which you have the physical or mental ability to perform.

(d) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.

(e) The department will require verification from a physician of your disability, including:

- (i) The restrictions on the tasks or work-related functions you can perform;
- (ii) The restrictions on the number of hours you can work, if any;
- (iii) The expected duration of the disability and resulting work restrictions; and
- (iv) The types of tasks or work-related functions you are able to perform with this disability, if known by the physician.

(2) **Definitions.** For the purposes of this chapter:

(a) "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

(b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery

(including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. 02-08-072, § 192-170-050, filed 4/2/02, effective 5/3/02.]

Chapter 192-180 WAC

JOB SEARCH REQUIREMENTS

WAC	
192-180-005	Job search requirements—Directives—RCW 50.20.010(1) and 50.20.230.
192-180-010	Job search requirements—Directives—RCW 50.20.010(1)(c) and 50.20.240.
192-180-012	Requirements of individuals who leave work due to illness or disability.
192-180-015	Tracking job search activities—RCW 50.20.240.
192-180-020	Monitoring job search activities—RCW 50.20.240.
192-180-025	Job search review interviews.
192-180-030	Penalties.
192-180-040	Directive to attend job search workshop or training course—RCW 50.20.044.

WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230. (1) **Am I required to register for work?** You must register for work unless you are:

(a) Attached to an employer, meaning you are partially unemployed or on standby as defined by WAC 192-110-015, or participating in the shared work program under Title 50.60 RCW;

(b) A member of a full referral union;

(c) Participating in a training program approved by the commissioner; or

(d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents.

(2) **How soon do I have to register?**

(a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.

(b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.

(3) **Where do I register for work?** You will be registered for work with your local employment center. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

(4) **What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-005, filed 6/3/99, effective 7/4/99.]

WAC 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240. (1) **Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer;

(b) Participating in a training program approved by the commissioner; or

(c) Unemployed due to strike or lockout as provided in RCW 50.20.090(2).

(2) **When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1).

(3) **What are my weekly job search requirements?**

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

(ii) If your claim is effective prior to January 4, 2004, participate in an approved in-person job search activity at the WorkSource office or local employment center; or

(iii) If your claim is effective January 4, 2004 or later, participate in three approved in-person job search activities at the WorkSource office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities each week.

(c) If you are a member of a full referral union you must be in good standing with your union, eligible for dispatch, and comply with your union's dispatch or referral requirements. Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

(4) **What is a "job search contact"?** A job search contact is a contact with an employer to inquire about or apply for a job. You may use job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department determines the contact is designed in whole or in part to avoid meeting the job search requirements.

(5) **What is an "in-person job search activity"?** This is an activity provided through the WorkSource office or local employment center that will assist you in your reemployment efforts. It includes, but is not limited to, job search workshops, training classes, or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington State, an in-person job search activity must be documented in the department's services, knowledge and information exchange system (SKIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search require-

ments. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3).

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

(a) Increase the number of employer contacts each week;

(b) Change your method of seeking work (such as from resumes to in-person contacts);

(c) Expand the geographic area in which your job search is conducted; or

(d) Seek work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-180-010, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040, 99-13-002, § 192-180-010, filed 6/3/99, effective 7/4/99.]

WAC 192-180-012 Requirements of individuals who leave work due to illness or disability. If you leave work because of your illness or disability:

(1) To be eligible for unemployment benefits, you must meet the job search requirements described in RCW 50.20.240; and

(2) The department will provide you with a directive that lists the job search requirements you must meet to maintain your eligibility for benefits. These job search requirements will not be more stringent than those imposed on claimants who are not disabled.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 02-08-072, § 192-180-012, filed 4/2/02, effective 5/3/02.]

WAC 192-180-015 Tracking job search activities—RCW 50.20.240. (1) **Do I need to keep track of my job search activities?** You must keep a record or log of your job search contacts and the in-person job search activities you receive through the WorkSource office or local employment center unless you are:

(a) A member of a full referral union;

(b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv); or

(c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

(a) For job search contacts, record the date contact was made; the employer's name, address and telephone number; the type of contact (in-person, telephone, etc.); the name of the person you contacted; the type of work you applied for; and the results of your contact;

(b) For in-person job search activities at the local reemployment center, record the date contact was made; a description of the services you received or the activities in which you participated; and the results of your contact.

(2005 Ed.)

(3) **Is there a specific form I must use?** The department will supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as all information required by this subsection is recorded.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-180-015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040, 99-13-002, § 192-180-015, filed 6/3/99, effective 7/4/99.]

WAC 192-180-020 Monitoring job search activities—RCW 50.20.240. (1) **Will my job search activities be monitored?** Every week that you file a claim for benefits, you must certify that you meet the job search requirements. The department may review your job search activities at any time. If you have been paid benefits for five or more weeks in any benefit year, you must provide the department with a copy of your job search log upon request. You must bring a copy of your job search log to any job search review interview (see WAC 192-180-025) for which you have been scheduled.

(2) **Will the department verify the information on my job search log?** Employer contacts and other job search activities on your log will be verified whenever the department has a question about the information reported. In addition, when you are scheduled for a job search review interview, your log will be verified with the listed employers on a random basis.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-180-020, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040, 99-13-002, § 192-180-020, filed 6/3/99, effective 7/4/99.]

WAC 192-180-025 Job search review interviews. (1) **What is a job search review (JSR) interview?** The JSR is an interview between you and a representative of the WorkSource office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?**

(a) The interviewer will review at least one week of your job search documentation. If the job search documentation is unsatisfactory, or you fail to appear for the JSR interview without being excused, you will be scheduled for a second interview in which all weeks claimed will be reviewed.

[Title 192 WAC—p. 61]

(b) If you are excused from attending the initial JSR interview, you will be rescheduled for a review of one week of your job search documentation.

(c) You may be excused from attending the initial JSR interview as scheduled **only** for the following reasons:

- (i) Jury duty;
- (ii) National Guard duty;
- (iii) Natural disaster or acts of nature; or
- (iv) Verifiable employment or a job interview.

(d) For purposes of this section, "all weeks" means the latest of the following:

- (i) Weeks claimed since January 4, 2004;
- (ii) Weeks claimed since you filed your application for benefits; or
- (iii) Weeks claimed since your last JSR interview, if applicable.

(4) **Do I need to bring anything else to the JSR interview?** You must be prepared to present proof of your identity during the JSR interview. This includes:

- (a) State or government issued photo identification; or
- (b) Two of the following government-issued documents:
 - (i) Voter's registration card;
 - (ii) U.S. military identification card or draft record;
 - (iii) Military dependent's identification card;
 - (iv) U.S. Coast Guard merchant mariner card;
 - (v) Native American tribal document;
 - (vi) U.S. social security card;
 - (vii) Certification of birth abroad issued by the U.S. Department of State;

- (viii) Original or certified copy of a birth certificate;
- (ix) U.S. citizen ID card;

(x) ID card for use of resident citizen in the United States; or

(xi) Unexpired employment authorization document issued by the United States citizenship and immigration services (formerly the Immigration and Naturalization Service).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-180-025, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-025, filed 6/3/99, effective 7/4/99.]

WAC 192-180-030 Penalties. (1) Is there a penalty if I don't look for work or fail to report for the JSR interview as directed? Benefits will be denied if you fail to:

- (a) Meet the minimum job search requirements;
- (b) Provide information about your job search activities and, once you have been paid five weeks of benefits, provide a copy of your job search log upon request;
- (c) Comply with any job search directive issued by the department; or

(d) Report to a scheduled job search review interview.

(2) **How long will my benefits be denied?** Benefits will be denied for the specific week or week(s) in which you fail to act as described in subsection (1).

(3) **What is the penalty if I don't attend a JSR that has been scheduled to review all weeks claimed?** If you fail to appear for a review of your job search logs for all weeks claimed, fail to produce your job search logs for those weeks, or your logs fail to establish that you have met the minimum job search requirements, such failure will be treated as non-

disclosure under RCW 50.20.160(3) and your benefits may be denied for any weeks at issue.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-180-030, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-030, filed 6/3/99, effective 7/4/99.]

WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044. (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

(2) You will not be directed to attend a job search workshop or training course if:

(a) You have an offer of bona fide work that begins within two weeks; or

(b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center; or

(c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for work or have been identified as a dislocated worker as defined in RCW 50.04.075.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010 (1)(c);
- (b) RCW 50.20.240; or
- (c) RCW 50.22.020(1).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-180-040, filed 12/9/04, effective 1/9/05.]

Chapter 192-200 WAC

SCHOOL OR TRAINING

WAC

192-200-005	Disqualification of students—RCW 50.20.095.
192-200-010	Training defined—RCW 50.20.043.
192-200-020	Commissioner approval of training—RCW 50.20.043.
192-200-030	Unemployment benefits while in training.

WAC 192-200-005 Disqualification of students—RCW 50.20.095. (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of 12 or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for 12 or more hours of instruction. You will be required to certify to the department that you are not currently registered for 12 or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. If you begin classes within 60 days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than 60 days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training as provided by RCW 50.20.043; or

(b) When you apply, you demonstrate by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-005.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(a) The training is a condition of your continued employ-

(2005 Ed.)

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-200-005, filed 12/9/04, effective 1/9/05.]

WAC 192-200-010 Training defined—RCW 50.20.043. (1) The term "training" means a course of education with the primary purpose of training in skills that will allow you to obtain employment.

(2) The term "training" does not include beginning a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-200-010, filed 12/9/04, effective 1/9/05.]

WAC 192-200-020 Commissioner approval of training—RCW 50.20.043. (1) **How do I apply for commissioner approved training?** If you wish to attend school or training while you receive unemployment benefits, and the training will interfere with your availability for full-time work, the training must be approved by the department. Contact the department and ask for an application for commissioner approved training. Your completed application must be returned to the unemployment claims telecenter. You will receive a decision, in writing, denying or approving your training application.

(2) **What factors will the department consider when reviewing my application?** The department will consider the following factors:

(a) Your plan for completion of the training;

(b) The nature of the training facility and the quality of the training;

(c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;

(d) Whether an oversupply of qualified workers exists;

(e) Whether you have the qualifications and aptitudes to successfully complete such training; and

(f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

(3) **What about training that is required by my job?** The commissioner will approve training that is required within an occupation if:

ment;

[Title 192 WAC—p. 63]

(b) The scheduling of the training is determined by your employer or a work related entity, and not by you (the claimant); and

(c) The training meets the requirements of subsections (2)(a), (b), (c), (d), and (e) of this section.

(4) **Can academic training be approved?** An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(5) **Can these requirements be waived?** In the case of individuals with physical or sensory handicaps, or in other unusual individual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

[Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-200-020, filed 4/5/99, effective 5/6/99.]

WAC 192-200-030 Unemployment benefits while in training. (1) To be eligible for unemployment benefits while in training, the following criteria must be met:

(a) The training must be full-time as defined by the training facility; and

(b) You must be making satisfactory progress in training as defined in WAC 192-270-065.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-200-030, filed 12/9/04, effective 1/9/05.]

Chapter 192-210 WAC

SPECIAL CATEGORY OCCUPATIONS

WAC

192-210-005	Definitions—Educational employees.
192-210-010	What are the objective criteria used to define "academic year"?—RCW 50.44.050(5).
192-210-015	How will the department decide if reasonable assurance exists?—RCW 50.44.053.
192-210-020	Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3).

WAC 192-210-005 Definitions—Educational employees. (1) **Contract.** An agreement that is binding on an educational institution to provide work and on an individual to perform services.

(2) **Faculty.** A teacher, counselor, librarian, or other position with similar training, experience and level of responsibility.

(3) **Full time employment.** Employment designated as full time for or at the educational institution under a collective bargaining agreement, individual hiring contract, or other agreement (including institutional policies), as provided in RCW 50.04.310(2). For faculty at public institutions, the hiring contract, agreement or institutional policy must be consistent with the provisions of RCW 28A.150.220 (kindergarten through twelfth grade), RCW 28B.50.851 (community and technical colleges), RCW 28B.35.120 (regional universities), or RCW 28B.20.130 (other colleges and universities).

(4) **Under the same terms and conditions of employment.** This includes economic conditions of employment such as wages, duration of contract, hours of work, and general nature of the work. It does not include other conditions and details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test. A position would be considered to be under the same terms and conditions of employment if it is of similar type or classification, with similar pay, fringe benefits, hours of work, general type of work, and duration of employment.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 02-19-009, § 192-210-005, filed 9/5/02, effective 10/6/02. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 99-18-066, § 192-210-005, filed 8/31/99, effective 10/1/99.]

WAC 192-210-010 What are the objective criteria used to define "academic year"?—RCW 50.44.050(5). Summer term will be considered part of the academic year for an educational institution unless:

(1) Total enrollment of full-time equivalent students during the previous summer term is less than one third of the average academic year enrollment of full-time equivalent students for the fall, winter, and spring terms of the preceding two years; or

(2) Total full-time equivalent staff during the previous summer term is less than fifty percent of the academic year

(2005 Ed.)

average of the full-time equivalent staff during the fall, winter, and spring terms during the preceding two years.

[Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 99-18-066, § 192-210-010, filed 8/31/99, effective 10/1/99.]

WAC 192-210-015 How will the department decide if reasonable assurance exists?—RCW 50.44.053. Reasonable assurance is a bona fide offer from an educational institution to assign an individual future work at that institution under the same terms and conditions as the individual's previous employment. It is less than a contract or written agreement, but more than a mere possibility of future employment. The department must find that continued employment for that individual is likely or probable. For instructional, research, or principal administrative staff at a community or technical college, the additional provisions of WAC 192-210-020 will be considered in determining whether the individual has reasonable assurance.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 02-19-009, § 192-210-015, filed 9/5/02, effective 10/6/02. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 99-18-066, § 192-210-015, filed 8/31/99, effective 10/1/99.]

WAC 192-210-020 Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3). (1) A person who performs services in an instructional, research, or principal administrative capacity at a community or technical college is presumed not to have reasonable assurance when an offer is conditioned on enrollment, funding, or program changes.

(2) A conditional or contingent offer of employment is any offer other than an agreement that is binding on the college to provide work and on the individual to perform services.

(3) The assertion by the college that an individual has reasonable assurance of continued employment is insufficient to overcome the presumption that a conditional or contingent offer of employment does not constitute reasonable assurance unless supported by documentation explaining why reasonable assurance exists. The college bears the burden of providing the department with this documentation. Primary weight will be given to the contingent nature of the offer of employment.

(4) Whether an individual has reasonable assurance from the college will be determined on a case by case basis by the total weight of evidence, rather than the existence of any single factor.

(5) Examples of the types of evidence the department will consider in deciding whether the college has overcome the presumption that a conditional or contingent offer is not reasonable assurance include, but are not limited to, the following:

[Title 192 WAC—p. 65]

(a) The terms of the offer of employment between the individual and the college, with consideration given to any provisions related to length, contingencies, or reasons for cancellation;

(b) The number of comparable positions at the college;

(c) Any hiring priorities used by the college;

(d) The college's past practices, including the individual's previous experience with similar offers of employment from that college, and whether any classes have been canceled due to lack of enrollment, lack of funding, or program changes.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 02-19-009, § 192-210-020, filed 9/5/02, effective 10/6/02.]

Chapter 192-220 WAC

OVERPAYMENT NOTICE AND ASSESSMENT

WAC

192-220-010	Overpayments—Notification to individual.
192-220-020	Overpayments—Fault provisions.
192-220-030	Overpayments—Equity and good conscience provisions.

WAC 192-220-010 Overpayments—Notification to individual. (1) If a potential overpayment exists, the department will provide you with an overpayment advice of rights, in writing, explaining the following:

- (a) The reasons you may have been overpaid;
- (b) The amount of the possible overpayment as of the date the notice is mailed;
- (c) The fact that the department will collect overpayments as provided in WAC 192-230-100;
- (d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;
- (e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, garnishment of salaries, and possible sale of real and personal properties;
- (f) An explanation that if you are not at fault, you may request a waiver of the overpayment. Waiver means the overpayment does not have to be repaid; and
- (g) A statement that you have 10 days to submit information about the possible overpayment and whether you are at fault. Failure to do so means the department will make a decision based on available information about the overpayment and your eligibility for waiver.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-220-010, filed 12/9/04, effective 1/9/05.]

WAC 192-220-020 Overpayments—Fault provisions. (1) When an overpayment occurs, the department will make a finding of fault or nonfault based on information provided by you and your employer and from information contained in the department's records. After reviewing all such information, you will be considered to be at fault when the overpayment is:

- (a) The result of fraud, misrepresentation, or willful non-disclosure;
- (b) The result of a discharge for a felony or gross misdemeanor under RCW 50.20.065;
- (c) The result of a discharge for gross misconduct under RCW 50.04.294; or
- (d) Based on the presence of all of the following three elements:
 - (i) You were paid benefits in an amount greater than you were entitled to receive and you accepted and retained those benefits; and
 - (ii) The payment of these benefits was based on incorrect information or a failure to furnish information which you should have provided as outlined in the information for

(2005 Ed.)

claimants booklet, claimant directives and other reasonable written communications issued by the department; or information which you caused another person to fail to disclose; and

(iii) You had notice that the information should have been reported.

(2) You may be considered at fault, even though you provided the department with all relevant information before the benefit eligibility decision was issued, if the overpayment is the result of payment that you should reasonably have known was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper and as a result are at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.

(d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which department fact finding indicates that you knew the payment was improper.

(3) In deciding whether or not you are at fault, the department will also consider education, mental abilities, emotional state, your experience with claiming unemployment benefits, and other elements of your personal situation which affect your knowledge and ability to comply with reporting all relevant information. This includes information contained in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department.

(4) You will be considered to be without fault when you provided the department with all relevant information before the benefit eligibility decision is issued and the overpayment is the result of payment that you would not reasonably have known was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper and as a result are not at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department erroneously removed a payment stop, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner or a court.

(f) Other circumstances in which department fact finding indicates you did not know the payment was improper.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-220-020, filed 12/9/04, effective 1/9/05.]

WAC 192-220-030 Overpayments—Equity and good conscience provisions. (1) The department will not consider or grant waiver of an overpayment and will not consider or accept an offer in compromise of an overpayment that is:

(a) Based on an overpayment decision written by a state other than Washington;

(b) The result of a conditional payment as provided in WAC 192-23-900; or

(c) For claims with an effective date of January 4, 2004, and later, the result of being discharged for misconduct or gross misconduct as provided in RCW 50.20.066(5).

(2) Except as provided in subsection (1), the department will grant waiver of an overpayment when it is found that you were without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience. It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required for necessary living expenses unless there are unusual circumstances which would argue against waiver.

(3) You will be required to provide financial information to the department to determine if the overpayment will be waived. Your failure to provide such information within 10 days from the request date will result in the department making a decision, based on available information, regarding your eligibility for waiver. The department may verify any financial information you provide. Any amount waived based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.

(4) The financial information requested includes:

(a) Your income and, to the extent available to you, other financially contributing members of the household for the previous month, the current month and the month following the date the financial information is requested.

(b) Your current and readily available liquid assets. Liquid assets may include, but are not limited to, checking and savings account balances, stocks, bonds and cash on hand.

(c) Your expenses for the previous month, the current month and the month following the date the financial information is requested.

(5) If your average monthly expenses equal or exceed your average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.

(6) When you have been denied waiver or waiver was not considered, you may enter into a payment agreement with the department.

(7) Except as provided in subsection (1), when you have been denied waiver or have been unable to reach a payment agreement with the department you may make an offer in compromise as provided in RCW 50.24.020. The basis for allowing or denying an offer in compromise will be the same criteria used by the department for allowing or denying waiver of an overpayment. Any overpayment amount compromised based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-220-030, filed 12/9/04, effective 1/9/05.]

Chapter 192-230 WAC

RECOVERY OF OVERPAYMENTS

WAC

192-230-100 Recovery of benefit overpayment—By repayment or offset against past or future benefits.

WAC 192-230-100 Recovery of benefit overpayment—By repayment or offset against past or future benefits. (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-28-130, the overpayment will be deducted from benefits payable for any week(s) you claim.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim cancelled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed two or more payments as provided in WAC 192-28-130. If you have missed two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

(5) If you have been denied waiver, or if waiver was not considered, you will be notified in writing of your right to enter into a payment agreement with the department or to make an offer in compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.065 or 50.20.070 unless there are unusual circumstances which would justify a compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.066.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-230-100, filed 12/9/04, effective 1/9/05.]

Chapter 192-240 WAC

EXTENDED BENEFITS

WAC

192-240-010	Regular shareable benefits defined.
192-240-015	How to apply for extended benefits.
192-240-020	Suitable work provisions—Regular shareable and extended benefits—RCW 50.22.020 (3) and (4).
192-240-025	Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Regular shareable and extended benefits.
192-240-030	Job search requirements to receive regular shareable or extended benefits—RCW 50.22.020(5).
192-240-035	How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons—RCW 50.22.020(7).
192-240-040	Penalties.
192-240-045	Moving to a state in an extended benefit period.

WAC 192-240-010 Regular shareable benefits defined. The term "regular shareable benefits" means regular benefits in excess of 26 times your weekly benefit amount that are paid during an extended benefit period.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-010, filed 2/26/03, effective 3/29/03.]

WAC 192-240-015 How to apply for extended benefits. File your application for extended benefits by placing a telephone call to an unemployment claims telecenter. The commissioner can authorize other filing methods in unusual circumstances or for the convenience of the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-015, filed 2/26/03, effective 3/29/03.]

WAC 192-240-020 Suitable work provisions—Regular shareable and extended benefits—RCW 50.22.020 (3) and (4). (1) An individual receiving benefits must be available for suitable work. Except as provided in subsection (2), any job is considered suitable for an individual receiving regular shareable or extended benefits unless:

(a) It is not within your capabilities;

(b) The position is vacant because of a labor dispute, working conditions are substantially less favorable than similar work in the area, or you would be required to join or resign from a union or labor organization (see RCW 50.20.110);

(c) The gross weekly pay is less than your weekly benefit amount, plus any supplemental unemployment benefits you receive from your former employer; or

(d) The job pays less than the higher of the federal or state minimum wage.

(2) If you can demonstrate that you have good prospects of returning to work in your customary occupation within a reasonably short period of time, suitable work is considered to be work in keeping with your prior work experience, education, or training. "Good prospects for work" means you have:

(a) A definite recall or hire date within four weeks; or and its place of business, the method of contact, the type of

(b) A probable recall or hire date within four weeks, based on an extremely favorable position on a union out-of-work list, seasonal factors, or historical experience.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-020, filed 2/26/03, effective 3/29/03.]

WAC 192-240-025 Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Regular shareable and extended benefits. (1) You will be denied regular shareable or extended benefits if you fail:

(a) To accept any offer of suitable work as defined in WAC 192-240-020; or

(b) To accept a referral, or to apply for suitable work, when referred by your local employment center, if the job was:

(i) Offered to you in writing, or

(ii) Listed with the department.

(2) The denial is for the week in which the refusal occurs and until you work in four weeks and earn four times your weekly benefit amount.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-025, filed 2/26/03, effective 3/29/03.]

WAC 192-240-030 Job search requirements to receive regular shareable or extended benefits—RCW 50.22.020(5). (1) To be eligible for regular shareable or extended benefits, you must show evidence of a systematic and sustained effort to find work. Your efforts must be of a quality and frequency that clearly indicate you are making sincere efforts to immediately return to gainful employment.

(a) At a minimum, your efforts must include at least four job search contacts with employers during each week you claim benefits.

(b) If you are a member in good standing of a referral union, you must make three job search contacts each week in addition to contacting your union and complying with the union's requirements.

(i) Registration with another union local can constitute one job search contact if you are willing to travel or relocate to accept work in their jurisdiction.

(ii) You do not have to look for work that would jeopardize your union membership, but must look for other work you are capable of doing.

(iii) If you have been identified by the department as having good prospects of returning to work within four weeks because you have an extremely favorable position on the union out-of-work list, contact with your union each week fulfills the job search requirements of this section.

(2) Every week you file a claim for regular shareable or extended benefits, you must report your job search contacts to the department. For each job search contact you must report the date of the contact, the employer or union involved work sought, and the results of the contact.

(3) You must keep a record or log of your job search contacts which contains the information required by WAC 192-180-015.

(4) The department may review your job search activities at any time. You must provide the department with a copy of your job search log upon request. Employer contacts will be verified by the department as needed.

(5) The department will consider you to have met the job search requirements of this section and of RCW 50.22.020(5) for any week in which you participate in a training program that is approved by the commissioner.

(6) The job search requirements under this section and RCW 50.20.020(5) are waived for any week in which you are unable to conduct a job search because you are serving on jury duty. See RCW 50.20.117.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-030, filed 2/26/03, effective 3/29/03.]

WAC 192-240-035 How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons—RCW 50.22.020(7). This section applies only to claims with an effective date prior to January 4, 2004. If you were denied benefits because you left work for family reasons as provided in RCW 50.20.050 (1)(d), you could qualify for regular benefits either through work and earnings or by reporting in person to your local employment center for each of ten weeks. However, you are not eligible for regular shareable or extended benefits unless, after leaving work, you obtained work and earned wages of seven times your weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-240-035, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-035, filed 2/26/03, effective 3/29/03.]

WAC 192-240-040 Penalties. (1) If you claim regular shareable or extended benefits during a week in which you failed to accept any offer of work, or failed to accept a referral or apply for any work as directed by the department:

(a) Benefits will be denied under RCW 50.20.080 if the work was suitable as defined by RCW 50.20.100 and 50.20.110, and you did not have good cause for failing to apply for or accept work;

(b) If benefits are denied as provided in subsection (1)(a), you will also be denied benefits as provided in RCW 50.22.020;

(c) Benefits will be denied under only RCW 50.22.020 if the work was suitable as provided in that statute and WAC 192-240-020, but did not meet the provisions of RCW 50.20.100 and 50.20.080.

(2) If you claim regular shareable or extended benefits during a week in which you failed to meet the job search requirements of WAC 192-240-030, benefits will be denied under RCW 50.22.020, except as provided in subsection (4).

(3) A denial of benefits under RCW 50.22.020 starts the week in which the failure occurs, and continues indefinitely until you show that:

(a) You have worked in at least four weeks; and

(b) You have earned at least four times your weekly benefit amount. The employment does not need to be covered by Title 50 RCW.

(4) If you fail to meet the job search requirements of WAC 192-240-030 because you are hospitalized for treatment of an emergency or life-threatening condition, benefits will be denied under RCW 50.20.010 (1)(c). The denial period is only for the week or weeks in which the hospitalization occurred.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-240-040, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-040, filed 2/26/03, effective 3/29/03.]

WAC 192-240-045 Moving to a state in an extended benefit period. RCW 50.22.030(2) provides that you are only eligible for two weeks of extended benefit payments if you live in a state that is not in an extended benefit period. If you subsequently move to a state that is in an extended benefit period, you may be eligible for further extended benefit payments under RCW 50.22.020 beginning with the first full week in which you reside in that state.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 03-06-038, § 192-240-045, filed 2/26/03, effective 3/29/03.]

Chapter 192-270 WAC

TRAINING BENEFITS FOR DISLOCATED WORKERS

WAC

192-270-005	Definitions.
192-270-010	Employment separations.
192-270-015	Unlikely to return to employment.
192-270-020	Employment in the aerospace industry.
192-270-025	Employment in the forest products industry.
192-270-030	Employment in the fishing industry.
192-270-035	Timeframes.
192-270-040	Enrollment in training.
192-270-045	Requirements for applying for training benefits.
192-270-050	Criteria for approving training plans.
192-270-055	Funding—Waiting lists.
192-270-060	Occupation in high demand outside labor market.
192-270-065	Certification of satisfactory progress.
192-270-070	Modifying a training plan.

WAC 192-270-005 Definitions. The definitions below apply to this chapter and RCW 50.22.150:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular set of skills have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. You will not be considered a dislocated worker if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.

(2) "NAICS" means the North American industry classification system code.

(3) "Plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. These wages must be earned in:

- (a) Your base year, and
- (b) At least two of the four twelve-month periods preceding your base year.

(4) "SIC" means the standard industrial classification code.

(5) "Skill set" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

(6) "Training benefits" means the additional benefits paid under RCW 50.22.150 to eligible dislocated workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

(7) "Wages" means remuneration earned in employment as defined in Title 50 RCW or the comparable laws of another state. This means that only wages in covered employment can be considered in determining whether you have sufficient tenure in an occupation or in work with a particular skill set.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-005, filed 5/16/01, effective 6/16/01.]

WAC 192-270-010 Employment separations. You must have been terminated or received a notice of termination from your employer to be eligible for training benefits. Training benefits are not available if you left work voluntar-

ily as provided in RCW 50.20.050, regardless of whether you had good cause for leaving, or if you are disqualified from benefits for work-related misconduct under RCW 50.20.060, and have not requalified for benefits.

When determining whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks that was in employment covered by Title 50 RCW or the comparable laws of another state.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-010, filed 5/16/01, effective 6/16/01.]

WAC 192-270-015 Unlikely to return to employment. Except as provided in RCW 50.22.150(3), the term "unlikely to return to employment" means, but is not limited to, situations where:

- (1) You have:
 - (a) Become unemployed due to a permanent plant closure;
 - (b) Received a federal WARN act notice; or
 - (c) Received a notice of indefinite layoff as a result of a permanent reduction of operations at your place of employment; and
- (2) Suitable work for individuals with your skills is in diminishing demand within your labor market.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-015, filed 5/16/01, effective 6/16/01.]

WAC 192-270-020 Employment in the aerospace industry. (1) Employment in the following SIC codes is considered employment in the aerospace industry:

3721	Aircraft
3724	Aircraft engines and engine parts
3728	Aircraft parts and auxiliary equipment

(2) Employment in the following NAICS code is considered employment in the aerospace industry:

336411	Aircraft manufacturing
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[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-020, filed 5/16/01, effective 6/16/01.]

WAC 192-270-025 Employment in the forest products industry. (1) As provided in RCW 50.22.150(2)(b), the department has determined that employment in industries assigned the following SIC or NAICS codes is considered employment in the forest products industry:

(a) SIC codes:	
24	Lumber and wood products, except furniture
26	Paper and allied products
08	Forestry
2861	Gum and wood chemicals
3553	Woodworking machinery

- 3554 Paper industry machinery manufacturing
- 5031 Lumber, plywood, millwork and wood panels

(b) NAICS codes:

- 321 Wood product manufacturing
- 322 Paper manufacturing
- 113110 Timber tract operations
- 113210 Forest nurseries and gathering of forest products
- 113310 Logging
- 115310 Support activities for forestry
- 325191 Gum and wood chemical manufacturing
- 333210 Sawmill and woodworking machinery manufacturing
- 333291 Paper industry machinery manufacturing
- 337110 Wood kitchen cabinet and countertop manufacturing
- 421310 Lumber, plywood, millwork and wood panel wholesalers

(2) The department further determines that employment reported in industries assigned the following SIC or NAICS codes may be employment in the forest products industry. The department may review the specific nature of the employer's business to determine whether it represents employment in the forest products industry:

(a) SIC codes:

- 2823 Cellulosic manmade fibers
- 3425 Saw blades and handsaws
- 4212 Local trucking without storage (log trucking; trucking timber)
- 4449 Water transportation of freight, NEC (log rafting and towing)
- 5113 Industrial and personal service paper

(b) NAICS codes:

- 325221 Cellulosic organic fiber manufacturing
- 332213 Saw blade and handsaw manufacturing
- 337215 Showcase, partition, shelving and locker manufacturing
- 422130 Industrial and personal service paper wholesalers

(3) Other employment may be considered to be employment in the forest products industry if it involves:

- (a) The planting and/or cultivation of trees for eventual harvest for lumber or paper manufacturing;
- (b) The harvest of logs for lumber or pulp production;
- (c) Hauling or shipping logs;
- (d) Hauling or shipping lumber or paper products from point of manufacture;
- (e) Scaling logs;
- (f) Repair of logging trucks or equipment;
- (g) Manufacture of wood processing, logging or forestry equipment, including but not limited to logging trucks, log splitters, draglines, or chippers;
- (i) Sale, rental or leasing of wood processing or logging equipment; or

(2005 Ed.)

(j) Other activities clearly involved in the forest products industry, even if performed for an employer whose primary business is not in the forest products industry.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-025, filed 5/16/01, effective 6/16/01.]

WAC 192-270-030 Employment in the fishing industry. Employment reported in industries assigned SIC code 0912, Finfish (commercial fishing), or NAICS code 114111, Fishing (finfish), is considered to be employment in the fishing industry.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-030, filed 5/16/01, effective 6/16/01.]

WAC 192-270-035 Timeframes. Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010).

(1) **Submitting a training plan.** You have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

(2) **Enrollment in training.** You must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(3) If you return to work, and subsequently become unemployed, the timeframes described in subsections (1) and (2) begin with the date you file your additional claim for benefits.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-035, filed 5/16/01, effective 6/16/01.]

WAC 192-270-040 Enrollment in training. To receive training benefits, you must be enrolled in an approved training program on a full-time basis as determined by the educational institution. You are enrolled in training if:

- (1) You have preregistered for classes or are on a waiting list; and
- (2) You have a starting date of training; and
- (3) The starting date is not more than one quarter or term away.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-040, filed 5/16/01, effective 6/16/01.]

WAC 192-270-045 Requirements for applying for training benefits. The following information must be included in your application for training benefits:

- (1) Your name and Social Security account number;
- (2) The name of the educational institution;
- (3) The address of the educational institution;
- (4) The department of the educational institution, if applicable;
- (5) The name of the training program;

- (6) A description of the training program, including remedial requirements if necessary;
- (7) Your enrollment date or your place on the waiting list and expected enrollment date;
- (8) The duration of the training program, including the dates you plan to begin and complete training;
- (9) The occupation(s) trained for;
- (10) A verification of your enrollment provided by the educational institution;
- (11) A release of information form authorizing the educational institution to release grades, attendance, and other measures of program progress to the department; and
- (12) Your signature.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-045, filed 5/16/01, effective 6/16/01.]

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

- (a) Whether you have a current benefit year as required by RCW 50.22.010(9);
- (b) Whether suitable employment is available in the labor market in which you currently reside (if you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits);
- (c) Your plan for completion of the training including, but not limited to, what financial resources you intend to use to fund the complete training plan when training benefits run out;
- (d) Whether you have the qualifications and aptitudes to successfully complete the training;
- (e) Whether the training relates to a high demand occupation, meaning that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers;
- (f) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and
- (g) Effective July 1, 2001, whether the educational institution meets the performance criteria established by the workforce training and education coordinating board.

(2) Academic training may be approved if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria of subsection (1).

(4) In the case of individuals with physical or sensory disabilities, or in other unusual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-050, filed 5/16/01, effective 6/16/01.]

WAC 192-270-055 Funding—Waiting lists. Payment of training benefits is contingent upon the availability of

funding. Training will not be approved under RCW 50.22.150 unless the department has determined that funds are available to support your training plan.

(1) The amount of funds obligated will be the amount necessary to complete your training plan or the maximum amount authorized by RCW 50.22.150 (5)(a), whichever is less.

(2) If you have been denied training benefits due to lack of funds, the department will consider whether you are eligible for commissioner approved training under WAC 192-200-020.

(3) Funds will be obligated in the following order:

(a) First, otherwise eligible dislocated workers who are enrolled in training approved by the department as of February 13, 2000;

(b) Second, other eligible dislocated workers on a first-come, first-served basis, determined by the date the completed training application is received by the department.

(4) Once all available funds have been obligated, individuals who have been denied training benefits due solely to the lack of funds will be placed on a waiting list. Priority on the waiting list will be determined by the date the claimant's completed training application was received by the department. As additional funds become available, this date will be used when obligating funds to claimants on the waiting list. In the event two or more claimants on the waiting list have the same date, priority will be given to that person who is closest to exhausting regular unemployment benefits.

(5) An individual's name may be removed from the waiting list, upon written notice, when the department determines it is appropriate. Examples include, but are not limited to:

(a) Written correspondence to the claimant from the department is returned by the U.S. postal service for lack of a current address, and the claimant has not filed a change of address with the department;

(b) The claimant fails to respond to written correspondence from the department by the date indicated in the correspondence;

(c) The claimant is not enrolled in or making satisfactory progress in full-time training; or

(d) Implementation of the approved training program would result in benefits being paid more than two years beyond the end of the claimant's benefit year.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-055, filed 5/16/01, effective 6/16/01.]

WAC 192-270-060 Occupation in high demand outside labor market. A training plan may be approved in an occupation not in demand in your local labor market if:

(1) The occupation is in high demand in another labor market; and

(2) You are willing and able to relocate to that labor market when the training is completed; and

(3) There is not a current demand for workers with your present skills in that labor market. The demand for workers in that labor market must be at wages comparable to those paid in your current labor market, based on any differences in the cost of living between the two areas.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-060, filed 5/16/01, effective 6/16/01.]

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in full-time training must be signed by the registrar or an equivalent person designated by your educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for more than one quarter;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-065, filed 5/16/01, effective 6/16/01.]

WAC 192-270-070 Modifying a training plan. (1) You must notify the department prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

(a) Your course of study or major;

(b) The educational institution;

(c) The projected start or end dates for the training; or

(d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b)-(g). Approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. However, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) If you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and shall be subject to recovery under RCW 50.20.190.

[Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-070, filed 5/16/01, effective 6/16/01.]

Chapter 192-300 WAC

REGISTERING FOR UNEMPLOYMENT INSURANCE TAXES

WAC

192-300-050	Predecessor-successor relationship defined.
192-300-100	Immediate family member of partners or corporate officers for RCW 50.04.150.
192-300-150	Employer election to cover individual—Interstate reciprocal coverage agreement.
192-300-170	Requirements for election of unemployment insurance coverage.
192-300-180	Joint accounts.
192-300-190	Owners of entities are not covered for unemployment insurance purposes.

WAC 192-300-050 Predecessor-successor relationship defined. This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(1) **Predecessor.** You are a "predecessor" if, during any calendar year, you transfer any of the following to another individual or organization:

(a) All, or a portion, of your operating assets as defined in subsection (3) below; or

(b) A separate unit or branch of your trade or business.

(2) **Successor.** You are a "successor" if, during any calendar year, you acquire substantially all of a predecessor employer's operating assets. You are a "partial successor" if, during any calendar year, you acquire:

(a) A portion of a predecessor employer's operating assets, or

(b) A separate unit or branch of a predecessor employer's trade or business.

(3) **Operating assets.** "Operating assets" include the properties you use in the normal course of business operations to generate your operating income. They may include properties that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, or goodwill. Employees are not operating assets.

(4) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (6) below.

(5) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that occurred as a result of the business acquisition or reorganization, beginning when the acquisition started and ending when the primary entity is transferred.

(6) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which

includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 04-23-058, § 192-300-050, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040, 00-05-068, § 192-300-050, filed 2/15/00, effective 3/17/00.]

WAC 192-300-100 Immediate family member of partners or corporate officers for RCW 50.04.150. The exemption in RCW 50.04.150 for family members employed on "corporate farms" includes family membership of all legal entities operating the farm.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.150, 99-20-127, § 192-300-100, filed 10/6/99, effective 11/6/99.]

WAC 192-300-150 Employer election to cover individuals—Interstate reciprocal coverage agreement. The commissioner may enter into interstate reciprocal coverage agreements with other states for the purpose of covering services performed by a person for a single employer where the services were performed in more than one state (RCW 50.12.060). These services are to be considered performed entirely in one state where:

a. Any part of the person's service is performed;

b. The person has a residence; or

c. The employer keeps a place of business.

(1) Election process

(a) **Filing.** An employer for whom personal services are performed, may file an election for coverage under the laws of a single state, for individuals who normally perform services in more than one state (or other jurisdiction) using a Form RC-1 "Employer's Election to Cover Multi-State Workers." Our department also requires that any employee to be covered sign the Form RC-2A "Notice to and Acquiescence of Employee as to Unemployment Compensation Coverage" which must accompany the Form RC-1.

(b) **Approval.** The agency of the elected state approves or disapproves the election.

If the agency approves the election, it forwards a copy of the election to any other participating states where the individual(s) might be covered by unemployment compensation law. Each participating state approves/disapproves the election as quickly as possible and notifies the appropriate agency of the elected state. If disapproved, the disapproving state notifies the elected state of its action and reason(s) for disapproval.

(c) **Withdrawal of election.** If an election is not approved, the employer may withdraw its election within ten (10) days of notification.

(d) **Effective date of election.** An approved election is effective at the beginning of the calendar quarter when the election was submitted.

(e) **Termination of election.** A request for election will be automatically terminated if an employee ceases to perform work in more than one state. This termination would take place at the end of the calendar quarter when the change was discovered.

2. Reports/notices to employees by employer or electing unit.

(a) The employer notifies each person affected of any approved election and sends the elected agency a copy of such notice.

(b) If a person covered by this election becomes unemployed, the employer, or electing unit will notify him/her as to which state covers any unemployment insurance claim.

(c) If an election ceases to apply to an individual, the employer will notify the affected individual in writing.

3. Other jurisdictions.

The commissioner may also enter into such reciprocal coverage agreements with the federal government, or foreign governments.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.060, 99-20-132, § 192-300-150, filed 10/6/99, effective 11/6/99.]

WAC 192-300-170 Requirements for election of unemployment insurance coverage. The department has to make timely and accurate employer liability determinations and unemployment insurance payments. It is under RCW 50.04.165 and 50.24.160 that we establish the election of coverage for unemployment insurance by employers where personal services are not considered employment:

(1) RCW 50.24.160 allows any business to file a request for election of unemployment insurance coverage for personal services not covered as employment:

(a) The request must be in writing to the department;

(b) The department must approve the request for election of coverage in writing; and

(c) The request must be signed by someone legally authorized to bind the business.

(2) RCW 50.04.165 allows a corporate employer to elect to cover the personal services of its corporate officers for unemployment insurance coverage:

(a) A corporate employer must submit a written request for voluntary coverage signed by a person authorized to legally bind the corporation. The department must receive this request no later than thirty days prior to the end of the quarter in which the change is to begin;

(b) "Corporate officer" is defined in RCW 23A.08.470;

(c) Corporate officers appointed under RCW 23B.08.400, other than those covered by Chapter 50.44, are not considered services in employment unless the corporation elects coverage of all its corporate officers under RCW 50.04.165;

(d) All services of corporate officers are considered exempt until the effective date of approval of election of coverage by the department; and

(e) Corporate officers are exempt under RCW 50.04.165 only if the employer has notified them in writing that they are ineligible for unemployment insurance benefits. The exemp-

(2005 Ed.)

tion becomes effective with the date of the written notice. The written notice must:

(i) Have the name(s) of the officer(s) who is/are being exempted;

(ii) Have the effective date of the exemption;

(iii) Have a signature of the officer(s) acknowledging receipt of the request;

(iv) Be kept on file by the corporation; and

(v) Be available for review by any department official upon request.

(3) If an agricultural corporate employer voluntarily covers its officers, the wages or salaries paid for such services will be used to determine the employer liability of the agricultural employer. Wages or salaries paid for service of corporate officers exempt under RCW 50.04.165 will not be used to determine liability of agricultural employers.

(4) All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. A written request by the employer must be sent to the department by January 15th following the end of the last calendar year of desired coverage.

(5) The department reserves the right to disapprove an election for unemployment insurance coverage due to:

(a) The applicant being nonliable for federal unemployment taxes (FUTA); or

(b) The seasonal nature of the occupation or industry.

(6) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:

(a) Of nonpayment of unemployment insurance taxes, and/or failure to file an unemployment insurance tax/wage report; or

(b) Of misrepresentation of facts; or

(c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010.

[Statutory Authority: RCW 50.12.010, 50.12.040, 00-05-064, § 192-300-170, filed 2/15/00, effective 3/17/00.]

WAC 192-300-180 Joint accounts. Relates to RCW 50.24.170.

(1) Any two or more employers may form joint accounts (consolidate) for the purposes of reporting and dealing with the unemployment insurance division of the department.

(2) Joint accounts must be acceptable to the department and cannot:

(i) Impair any obligation by these employers to the unemployment insurance division;

(ii) Interfere with the payment of benefits to workers;

(iii) Result in any administrative inconvenience to the division; or

(iv) Allow an employer to receive an experience rate to which it was not entitled.

(3) Joint accounts must provide for the maintenance of all records necessary under the Employment Security Act.

(4) Joint accounts may not be formed until the department has approved the plan of consolidation, in writing.

(5) A joint account should never be confused with a common paymaster. A common paymaster is an independent third party who contracts with, and represents, two or more employers; and who files a combined tax report for those

employers. Common paymaster does not meet the department's definition of a joint account. We do not allow this type of reporting.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.24.170. 99-20-128, § 192-300-180, filed 10/6/99, effective 11/6/99.]

WAC 192-300-190 Owners of entities are not covered for unemployment insurance purposes. The owners of a business as identified in RCW 50.04.090 include business entities such as limited liability companies, limited liability partnerships, etc. There is no employer-employee relationship in the services provided to the business by the owners, as defined in RCW 50.04.100. Therefore, owners are not covered for unemployment insurance purposes.

[Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-067, § 192-300-190, filed 2/15/00, effective 3/17/00.]

Chapter 192-310 WAC

REPORTING OF WAGES AND TAXES DUE

WAC

192-310-010	Employer reports—RCW 50.12.070.
192-310-020	Tax payments by employers—RCW 50.24.010.
192-310-025	Application of payments.
192-310-030	Reports and tax payments subject to penalty.
192-310-035	Employer reports—Failure to report hours.
192-310-040	Employer reports—Further defining hours worked—RCW 50.12.070.
192-310-050	Employer records.
192-310-055	Employer records—Farm operator or farm labor contractor.
192-310-060	Tips as wages.
192-310-070	Value of meals, lodging and in-kind compensation.
192-310-100	Posting of notices by employers.

WAC 192-310-010 Employer reports—RCW 50.12.070. (1) **Master application.** Every person or entity, which has one or more individuals performing services for it in the state of Washington, must file a master application with the department in a format prescribed by the commissioner.

(2) Quarterly tax and wage reports:

(a) Tax report. Each employer must file a quarterly tax report with the commissioner listing the total wages paid to all individuals in its employ during that calendar quarter.

(b) Report of employee's wages. Each employer must file a quarterly report of employee's wages with the commissioner. This report must list each employee by name, social security number, hours worked, and wages paid during that calendar quarter.

(c) Format. The quarterly tax and wage reports must be filed in one of the following formats:

(i) Electronically, using the current version of *UIFastTax*, *UIWebTax*, or *ICESA* Washington; or

(ii) Paper forms supplied by the department (or a certified version of those forms).

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. Therefore, reports are due by April 30, July 31, October 31, and January 31, respectively. Exceptions to the time and manner of filing the report must be approved in advance by the commissioner.

(e) Termination of business. Each employer who ceases business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due to the date such account is closed;

(ii) A report of employee's wages for the current calendar quarter which includes all wages paid to the date such account is closed.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 04-23-058, § 192-310-010, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.070, 98-14-068, § 192-310-010, filed 6/30/98, effective 7/31/98.]

(2005 Ed.)

WAC 192-310-020 Tax payments by employers—RCW 50.24.010. (1) Taxes are payable quarterly. Each quarterly payment must include the taxes due on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which such taxes have accrued. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Sunday or a legal holiday, the tax payment must be received or postmarked on the next working day.

(2) Tax payments are due immediately when an employer ceases business or the account is closed by the department. Taxes not paid immediately are delinquent, but interest will not accrue until the first day of the second month following the end of the calendar quarter for which such taxes have accrued.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 98-14-068, § 192-310-020, filed 6/30/98, effective 7/31/98.]

WAC 192-310-025 Application of payments. (1) A payment received with a tax report will be applied to the quarter for which the report is filed. A payment exceeding the legal fees, penalties, interests and taxes due for that quarter will be applied to any other debt as provided in subsection (2). If no debt exists, a credit statement will be issued for any overpayments.

(2) A payment received without a tax report will be applied in the following order of priority, beginning with the oldest quarter:

(a) Costs of audit and collection.

(b) Penalties for willful misrepresentation of payroll.

(c) Lien fees.

(d) Warrant fees.

(e) Late tax report penalty.

(f) Penalties for incomplete reporting or reporting using incorrect format.

(g) Late tax payment penalty.

(h) Interest charges.

(i) Tax payments.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 04-23-058, § 192-310-025, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040, 98-14-068, § 192-310-025, filed 6/30/98, effective 7/31/98.]

WAC 192-310-030 Reports and tax payments subject to penalty. (1) **Late tax reports.** An employer who files a tax report as described in WAC 192-310-010 (2)(a) but does not file it within the time frame prescribed in WAC 192-310-010 (2)(c) is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the department.

(2) **Incomplete tax reports.** An employer is required to file the report required by WAC 192-310-010 in a complete manner and in the format required by the commissioner.

[Title 192 WAC—p. 79]

(a) An "incomplete report" is defined as any report submitted by either a contributory or reimbursable employer where:

- (i) The entire wage report is not submitted timely; or
- (ii) A required element is not reported (social security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported such as, but not limited to, missing social security numbers, names, hours, wages; or
- (v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report.

(b) An "incorrect format" means any report that is not submitted in the format required by the commissioner under WAC 192-310-010(c).

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who fails to file a report required by RCW 50.12.070 is subject to penalty as follows:

(a) **Incomplete tax report.** The penalty for filing an incomplete tax report will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted an incomplete report, the following schedule will apply:

- (i) First occurrence \$75.00
- (ii) Second occurrence \$150.00
- (iii) Third and subsequent occurrences \$250.00

(b) **Filing tax report in an incorrect format.** The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:

- (i) First occurrence \$150.00
- (ii) Second and subsequent occurrences \$250.00

(4) **Knowingly misrepresenting amount of payroll.** If an employer knowingly misrepresents to the department the amount of his or her payroll, upon which contributions under this title are based, the employer is liable for a penalty of ten times the difference between the contributions paid, if any, and the amount of contributions the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer is also liable to the department for the reasonable expenses of auditing his or her books and collecting such sums as provided in WAC 192-340-100.

(5) **Report of employee's wages.** Any decision to assess a penalty for filing a late or incomplete report of employee's wages as described in WAC 192-310-010 (2)(b) will be made on an individual basis by the chief administrative officer of the tax branch as provided in RCW 50.12.220.

(6) **Delinquent tax payments.** For purposes of RCW 50.12.220, tax payments are delinquent as provided in WAC 192-310-020 and RCW 1.12.070.

(7) **Penalty waivers.** The department may, for good cause, waive penalties in the following situations:

(a) The return was filed on time but inadvertently mailed to another agency;

(b) The delinquency was due to an action of an employee of the department, such as providing incorrect information to the employer when the source can be identified, or not furnishing proper forms to permit the filing of tax reports or the payment of taxes on time;

(c) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(d) The delinquency was caused by the accidental destruction of the employer's place of business or business records; or

(e) The department finds the employer to be out of compliance during an employer-requested audit, but the department determines the employer made a good faith effort to comply with all applicable laws and rules.

(8) **Waiver requests.** A request for a waiver of penalties must be written, contain all pertinent facts, be accompanied by available proof, and be filed through a tax office. In all cases the burden of proving the facts is on the employer.

(9) **Extensions.** The department, for good cause, may extend the due date for filing a report. The employer must make a deposit with the department in an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit will be credited to the employer's account and applied to the employer's debt. The amount of the deposit is subject to approval by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040, 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

WAC 192-310-035 Employer reports—Failure to report hours. (1) If an employer fails to report hours worked and a former employee files for benefits, the benefits will be based on the amount of hours calculated by using the state's minimum wage (RCW 49.46.020) in effect at the time.

(2) If the employer subsequently produces the actual hours worked, the employee's claim will be recalculated.

(3) In the event the claim is voided, or reduced, the original claim amount will not be considered as an overpayment against the claimant.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 49.46.020, 99-20-134, § 192-310-035, filed 10/6/99, effective 11/6/99.]

WAC 192-310-040 Employer reports—Further defining hours worked—RCW 50.12.070. This section defines the hours that should be included on the employer's quarterly tax and wage report.

(1) **Vacation pay.** The employer will report the number of hours an employee is on leave with pay. Cash payments made in place of vacation time will not be counted as hours worked.

(2) **Sick leave pay.** In accordance with RCW 50.04.330(1), any amount of payments made to the employee covered under a qualified plan regarding sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered to be wages or com-

pendation. Neither hours nor wages are reportable. Under a nonqualified plan, the wages and hours are reportable.

(3) **Overtime.** The employer will report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned employees.** An employer will report the actual number of hours worked by employees paid by commission. In the absence of reliable time keeping records, the employer will report a full-time commissioned employee for 40 hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice, the employer will report the actual number of hours that would have been for which they were compensated. Wages in lieu of notice compensates the employee upon termination of service for the amount of wages they would have earned during the specified period.

(6) **Employees on salary.** If a salaried employee works other than the regular 40-hour week, the employer will report the actual number of hours worked. In the absence of a reliable time keeping record, the employer will report a full-time salaried employee for 40 hours each week they worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time.

(i) In the absence of reliable hourly information, an employer will report the hours of instruction as part-time using 35 hours as the base per week using the following computation. For example, an instructor teaches 12 hours per week. 12 hours divided by 15 hours equals 80%. 35 hours times 80% equals 28 hours. The employer will report the 28 hours to the department on the employer's quarterly tax and wage report.

(ii) Any part-time salaried instructor who does not establish a valid claim because of this formula, may provide the department with documentation of hours worked which exceeds the reported hours by the employer.

(8) **Severance pay.** Employers will not report additional hours worked for severance pay. Severance pay is reportable and taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** The employer will report the actual hours worked for performing services, which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** An employer will not report additional hours for bonuses, tips or other gratuities if they are received performing regular hours if bonuses, tips and gratuities are the only sources of their compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, the total figure will be rounded to the next higher number.

[Statutory Authority: Chapters 34.05 and 50.12 RCW, RCW 50.12.070 and 50.04.330(1), 99-20-141, § 192-310-040, filed 10/6/99, effective 11/6/99.]

WAC 192-310-050 Employer records. The commissioner requires every employer to keep true and accurate business, financial, and employment records which are

(2005 Ed.)

deemed necessary for the effective administration of chapter 50.12 RCW.

Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

- a. The name of each worker;
- b. The Social Security number of each worker;
- c. The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;
- d. The basis upon which wages and/or remuneration are paid to each worker;
- e. The location where such services were performed;
- f. A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;
- g. The workers' total gross pay period earnings;
- h. The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and
- i. The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

[Statutory Authority: Chapters 34.05 and 50.12 RCW. 00-01-164, § 192-310-050, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

WAC 192-310-055 Employer records—Farm operator or farm labor contractor. The commissioner requires every employer to keep true and accurate employment records under chapter 50.12 RCW.

(1) Farm operators, or farm labor contractors must comply with the rules set forth in WAC 192-310-050.

(2) Farm operators contracting with a crew leader or a farm labor contractor must make, keep, and preserve, original records containing the following information:

- (a) The inclusive dates of the contract;
- (b) The types of services performed;
- (c) The number of persons performing such services;
- (d) The name of the contractor or crew leader; and
- (e) Evidence of the farm labor contractor's license as required under chapter 19.30 RCW.

[Statutory Authority: Chapters 34.05 and 50.12 RCW. 00-01-166, § 192-310-055, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

WAC 192-310-060 Tips as wages. For the department to make timely and accurate employer liability determinations and unemployment insurance payments, tips as wages, are those tips that an employee is required to report to the employer by federal law.

(1) The employer must report tips each quarter on an "as paid" basis. Tips are considered "paid" when the employee reports them to the employer for federal income tax purposes; or when they are distributed by the employer to the employee.

(2) Tips are not considered wages for benefit calculation purposes when the value has not been reported to the employer.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320. 99-20-129, § 192-310-060, filed 10/6/99, effective 11/6/99.]

WAC 192-310-070 Value of meals, lodging and in-kind compensation. Relates to compensation paid for personal services including commissions and bonuses and the cash value of all remuneration paid in any form other than cash.

(1) The value of meals and/or lodging for the convenience of the employer (i.e. provided by the employer, on the employer's premises, or as a condition of employment) is not considered reportable compensation, unless it comprises twenty-five percent, or more, of the employee's total pay per pay period.

(2) Compensation for personal services paid in-kind, or in any medium other than cash will be given its current prevailing market value. This value will be considered as wages in computing taxes due under unemployment insurance laws. If any hiring contract fixes the value of such items, the value will be considered the actual value.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320. 99-20-130, § 192-310-070, filed 10/6/99, effective 11/6/99.]

WAC 192-310-100 Posting of notices by employers. (Relating to RCW 50.20.140). Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. These notices inform the individual that this employer is liable for taxes under the Employment Security Act.

(1) The notices provide information to individuals who may be unemployed about how to register for work, file claims for benefits, and rights to benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide notices to employers.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.20.140. 99-20-133, § 192-310-100, filed 10/6/99, effective 11/6/99.]

Chapter 192-320 WAC

EXPERIENCE RATING AND BENEFIT CHARGING

WAC

192-320-050	Requirements of partial successors—Chapter 50.29 RCW.
192-320-055	Predecessor-successor transfers through intermediaries.
192-320-060	Delinquent predecessor taxes.
192-320-065	Relief of benefit charges.
192-320-070	Conditions for relief of benefit charges due to a voluntary quit.
192-320-075	Charges to the separating employer—RCW 50.29.021 (2)(c).

WAC 192-320-050 Requirements of partial successors—Chapter 50.29 RCW. (1) If you are a partial successor, you must return the partial transfer of experience letter provided to you by the department within thirty days of the mailing date. Your response must indicate the percentage of operating assets transferred to you as the partial successor.

(2) If you do not return the letter within thirty days, you will keep the tax rate class that was assigned to the predecessor employer for the remainder of the rate year. However, in the following calendar year you will receive the average industry rate. You will keep this rate until you qualify for a different rate in your own right.

[Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-068, § 192-320-050, filed 2/15/00, effective 3/17/00.]

WAC 192-320-055 Predecessor-successor transfers through intermediaries. When operating assets are transferred from one employer to another by the use of an intermediary, whose function is to arrange, or facilitate, the transfer process (RCW 50.04.320 and 50.29.062) – the existence of a predecessor-successor relationship will be determined on a case-by-case basis by the department. The fact that an intermediary was used does not preclude the existence of a predecessor-successor relationship.

In determining if a predecessor-successor relationship exists, the department will consider the:

- Intent of the parties involved; and
- Economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

[Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.320 and 50.29.062. 99-20-131, § 192-320-055, filed 10/6/99, effective 11/6/99.]

WAC 192-320-060 Delinquent predecessor taxes. RCW 50.29.062 provides that a successor employer, defined in WAC 192-300-050, will be assigned the tax rate of the predecessor employer. If the successor employer has been assigned the maximum tax rate due to late or nonpayment of taxes to the department by the predecessor employer; they may receive a lower rate upon completion of the following:

- Submit a written request to the department; and
- Payment of delinquent tax payments by the cut-off date of September 30th; or
- If the purchase was finalized after September 30th and all reports and any taxes due are submitted within thirty (30) days of escrow closure, or purchase of the business.

(2005 Ed.)

The successor employer will receive the tax rate of the predecessor employer as if the taxes had been paid timely. The successor will keep this rate until eligible under experience rating statutes for a different rate.

[Statutory Authority: Chapters 34.05, 50.12 RCW and portion of RCW 50.29.062. 00-01-165, § 192-320-060, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-076.]

WAC 192-320-065 Relief of benefit charges. For purposes of RCW 50.20.020(2) a contribution-paying nonlocal government base year employer may request relief from certain benefit charges which result from the payment of benefits to an individual.

(1) **Employer added to a monetary determination as the result of a redetermination.** The employer's request for relief of benefit charges must be received or postmarked within thirty (30) days of mailing the notification of redetermination (Notice to Base Year Employer - EMS 166).

(2) **Timely response.** The commissioner may consider a request for relief of benefit charges that has not been received or postmarked within thirty (30) days as timely if the employer establishes good cause for the untimely response.

(3) **Additional information.**

(a) The employer shall provide the information requested by the department within thirty (30) days of the mailing date of the department's request.

(b) It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to make a determination of relief of benefits charges, or good cause for failure to respond in a timely manner.

(c) Failure to respond within thirty (30) days will result in a denial of the employer's request for relief of benefit charges unless the employer establishes good cause for the untimely response.

(4) **Denial and appeal of request.** Any denial of a request for relief of benefit charges shall be in writing and will be the basis of appeal pursuant to RCW 50.32.050.

[Statutory Authority: Chapter 34.05 RCW and RCW 50.20.020(2). 00-01-167, § 192-320-065, filed 12/21/99, effective 1/21/00.]

WAC 192-320-070 Conditions for relief of benefit charges due to a voluntary quit. (1) For claims with an effective date prior to January 4, 2004, a contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.020(3) may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.020(4) and WAC 192-320-065.

(2) For claims with an effective date on or after January 4, 2004, a contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a

[Title 192 WAC—p. 83]

voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065.

(3) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same, or the job location may have changed; but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market.

(4) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer; and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) Such other work-related factors as the commissioner may deem pertinent.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 04-23-058, § 192-320-070, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-069, § 192-320-070, filed 2/15/00, effective 3/17/00.]

WAC 192-320-075 Charges to the separating employer—RCW 50.29.021 (2)(c). (1) If a claimant voluntarily quits work to accept a job with a new employer, one hundred percent of benefits paid on the claim will be charged

to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for one hundred percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

(a) A reduction in the individual's usual compensation of twenty-five percent or more under WAC 192-150-115;

(b) A reduction in the individual's usual hours of twenty-five percent or more under WAC 192-150-120;

(c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;

(d) A deterioration in the individual's worksite safety under WAC 192-150-130;

(e) Illegal activities in the individual's worksite under WAC 192-150-135; or

(f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 04-23-058, § 192-320-075, filed 11/15/04, effective 12/16/04.]

Chapter 192-330 WAC

COLLECTIONS AND REFUNDS

WAC

192-330-100	Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150.
192-330-110	Delinquencies.
192-330-150	Tribes and tribal entities—RCW 50.50.040.
192-330-155	Notification to tribes.

(2) The tribe will be responsible for notifying its employees of the potential loss of coverage.

[Statutory Authority: RCW 50.12.010, 50.12.040, 03-22-032, § 192-330-155, filed 10/28/03, effective 11/28/03.]

WAC 192-330-100 Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150. An employer may file a written request for refund of, or adjustment to, contributions, interest, or penalties within three years of the date they were paid. The commissioner may also make refunds *or* adjustments using his/her own initiative.

When the wages of an employee have been reported in error and the department has paid a claimant benefits based on those wages, any request for refund of the tax will be offset by the amount of benefits paid. If there is any refund of taxes due the employer, it will be reduced by the amount of benefits paid against the claim(s) and any associated wages.

[Statutory Authority: RCW 50.12.010, 50.12.040, 00-05-066, § 192-330-100, filed 2/15/00, effective 3/17/00.]

WAC 192-330-110 Delinquencies. RCW 50.29.025 (1)(f)(i) and (2)(c)(i) specifies the tax rate that shall be charged to employers who have failed to pay their contributions and who are not in compliance with a deferred payment contract. The tax rate established by that section shall also be assigned to a reimbursable employer (one who makes payments in lieu of contributions) who is delinquent in its payments and elects or is required to become a contribution-paying employer.

[Statutory Authority: RCW 50.12.010, 50.12.040, 03-22-032, § 192-330-110, filed 10/28/03, effective 11/28/03.]

WAC 192-330-150 Tribes and tribal entities—RCW 50.50.040. (1) In any revocation action, the department will treat the entire tribe as a single entity. If any tribal entity or unit becomes delinquent, the entire tribe will be treated as delinquent. If any entity of the tribe is a contribution-paying employer and is delinquent, the entire tribe will be treated as a contribution-paying employer and will be subject to revocation of coverage.

(2) The ninety and one hundred eighty day response periods begin with the date the tax statement is mailed to the employer by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 03-22-032, § 192-330-150, filed 10/28/03, effective 11/28/03.]

WAC 192-330-155 Notification to tribes. (1) A copy of any notice of payment or reporting delinquency required by RCW 50.50.050, issued to a tribe or tribal unit, will be provided to the tribal chairperson and to such other person(s) designated by the tribe or tribal unit.

Chapter 192-340 WAC

AUDITS AND TECHNICAL ASSISTANCE

WAC

192-340-010 Field audit expansion.
192-340-100 Reasonable audit expenses—RCW 50.12.220 (1)(b).

WAC 192-340-010 Field audit expansion. The department's audit expansion requirements are as follows:

(1) If underreported or overreported wages for employees originally reported and/or new workers are discovered in the audit year, the department may expand to subsequent year(s). Subsequent year(s) and/or quarter(s) means up to the most recently completed calendar quarters where the tax and wages are reported.

(2) When the department feels there are facts that indicate that the employer has made a conscious effort to avoid taxation, the audit period may be expanded within statutory limitations.

(3) In the post audit interview, it is the responsibility of the department to ensure that audit exceptions are discussed and future reporting requirements are understood by the entity being audited.

[Statutory Authority: RCW 50.12.010, 50.12.040, 00-05-065, § 192-340-010, filed 2/15/00, effective 3/17/00.]

WAC 192-340-100 Reasonable audit expenses—RCW 50.12.220 (1)(b). Reasonable expenses for auditing an employer's books and collecting taxes may include:

(1) Salaries and benefits based on the payrolls documented for state staff conducting the audit (including reporting and follow-up costs);

(2) Communication costs such as telephone charges for arranging the audit, e-mails, mail or similar communication services;

(3) Travel costs for expenses such as transportation, lodging, subsistence and related items incurred by state employees traveling for the purpose of conducting the audit. Such costs may be charged on an actual cost basis or on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed by the department;

(4) Customary standard commercial airfare costs (coach or equivalent);

(5) Costs for materials and supplies (including the costs of producing reports and audit findings);

(6) Equipment costs necessary for conducting the audit;

(7) Collection costs, including court costs, lien and warrant fees, and related costs; and

(8) Other costs which the department establishes that are directly related to the audit or collection of the penalty (i.e. appeal costs).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 04-23-058, § 192-340-100, filed 11/15/04, effective 12/16/04.]

Title 10 WAC

ADMINISTRATIVE HEARINGS, OFFICE OF

Chapters

- 10-04** Agency organization—Public records.
- 10-08** Model rules of procedure.
- 10-12** Compliance with State Environmental Policy Act.
- 10-16** Complaint procedures.
- 10-20** Firearms and weapons in administrative hearings.

Chapter 10-04 WAC

AGENCY ORGANIZATION—PUBLIC RECORDS

WAC

10-04-010	Purpose.
10-04-020	Function—Organization—Offices.
10-04-030	Public records—Availability.
10-04-040	Public records—Officer.
10-04-050	Requests for public records.
10-04-060	Copying fees.
10-04-070	Exemptions.
10-04-080	Review of denials of public records request.
10-04-090	Protection of public records.

WAC 10-04-010 Purpose. The purpose of this chapter is to provide rules implementing RCW 42.17.250 et seq. for the office of administrative hearings.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-010, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-010, filed 11/1/82.]

WAC 10-04-020 Function—Organization—Offices. The office of administrative hearings conducts impartial administrative hearings for state agencies and local governments pursuant to chapter 34.12 RCW. The office is under the direction of the chief administrative law judge.

Administrative law judges preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law.

The administrative office is located at 919 Lakeridge Way SW, 2nd Floor, P.O. Box 42488, Olympia, Washington, 98504-2488. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are assigned to field offices located in Everett, Olympia, Seattle, Spokane, Vancouver, and Yakima. Each office is headed by a senior administrative law judge.

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the chief administrative law judge or designee at the administrative office.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-020, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 42.17.250 [(1)(a). 93-10-098, § 10-04-020, filed 5/5/93, effective 6/5/93. Statutory Authority: RCW 42.17.250 and 34.05.220 (1)(b). 89-13-036 (Order 6), § 10-04-020, filed 6/15/89. Statutory Authority: RCW 42.17.250 and 34.04.020. 85-22-032 (Order 4), § 10-04-020, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-020, filed 11/1/82.]

WAC 10-04-030 Public records—Availability. Public records are available for public inspection and copying except as otherwise provided under chapter 42.17 RCW and these rules.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-030, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-030, filed 11/1/82.]

[Title 10 WAC—p. 88]

WAC 10-04-040 Public records—Officer. The public records officer for the administrative office shall be the executive assistant. For those records maintained at field office locations, the public records officer shall be the senior administrative law judge.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-040, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-040, filed 11/1/82.]

WAC 10-04-050 Requests for public records. (1) Members of the public may inspect or obtain copies of public records in accordance with chapter 42.17 RCW by submitting a written request to the public records officer (or designee) during office hours. The office shall provide a form for submitting a request for public records. The request shall include the following information:

- (a) The name of the person requesting the record;
 - (b) The date on which the request was made;
 - (c) The nature of the request;
 - (d) An appropriate description of the record requested;
- and
- (e) Where and how to deliver the record requested.

(2) The public records officer shall assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-050, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-050, filed 11/1/82.]

WAC 10-04-060 Copying fees. No fee shall be charged for the inspection of public records. The office shall charge a fee of fifteen cents per page of copy for providing copies of public records and for the use of the office's copy equipment, including electronic telefacsimile transmission, plus the actual postage or delivery charge. Fees may be waived for minimal copies.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-060, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 42.17.250 and 34.05.220 (1)(b). 89-13-036 (Order 6), § 10-04-060, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-060, filed 11/1/82.]

WAC 10-04-070 Exemptions. (1) The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 10-04-050 is exempt under the provisions of chapter 42.17 RCW or other law.

(2) In addition, pursuant to RCW 42.17.260(1), the office reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chap-

(2005 Ed.)

ter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-070, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-070, filed 11/1/82.]

WAC 10-04-080 Review of denials of public records request. (1) A person whose request for a public record has been denied may petition for prompt review of the denial by submitting a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief administrative law judge or designee. The chief administrative law judge or designee shall immediately consider the matter and affirm, modify, or reverse the denial within two business days following the original denial.

(3) A person whose request for a public record has been denied may request the attorney general to review the matter pursuant to RCW 42.17.325.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-080, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-080, filed 11/1/82.]

WAC 10-04-090 Protection of public records. (1) No person shall knowingly alter, deface, or destroy public records of the office.

(2) Original copies of public records of the office shall not be removed from the premises where maintained by the office.

(3) Care and safekeeping of public records of the office, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

(5) Persons requesting, inspecting, or copying public records shall not disrupt the office.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 42.17.250. 99-20-115, § 10-04-090, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-090, filed 11/1/82.]

Chapter 10-08 WAC

MODEL RULES OF PROCEDURE

WAC

10-08-001	Declaration of purpose.
10-08-035	Adjudicative proceedings—Application.
10-08-040	Adjudicative proceedings—Notice of hearing.
10-08-045	Adjudicative proceedings—Notice to limited-English-speaking parties.
10-08-050	Adjudicative proceedings—Assignment of administrative law judge—Motion of prejudice.
10-08-080	Computation of time.
10-08-083	Notice of appearance.
10-08-085	Consolidation of proceedings.
10-08-090	Adjudicative proceedings—Continuances.
10-08-110	Adjudicative proceedings—Filing and service of papers.
10-08-120	Adjudicative proceedings—Subpoenas.
10-08-130	Adjudicative proceedings—Prehearing conference.
10-08-135	Summary judgment.
10-08-140	Adjudicative proceedings—Evidence.
10-08-150	Adjudicative proceedings—Interpreters.
10-08-160	Adjudicative proceedings—Testimony under oath or affirmation.
10-08-170	Adjudicative proceedings—Reporting—Recording.
10-08-180	Adjudicative proceedings—Teleconference hearings.
10-08-190	Adjudicative proceedings—Cameras—Recording devices.
10-08-200	Adjudicative proceedings—Presiding officer.
10-08-210	Adjudicative proceedings—Initial or final order.
10-08-211	Adjudicative proceedings—Petition for review and replies.
10-08-215	Adjudicative proceedings—Reconsideration.
10-08-217	Shortened record on petition for review or appeal.
10-08-219	Correction of transcript.
10-08-220	Other law.
10-08-230	Informal settlements.
10-08-250	Declaratory orders—Form, content and filing.
10-08-251	Declaratory orders—Procedural rights of persons in relation to petition.
10-08-252	Declaratory orders—Disposition of petition.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

10-08-010	Application of chapter 10-08 WAC. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-010, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
10-08-020	Scope of chapter 10-08 WAC. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-020, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
10-08-030	Definitions. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-030, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
10-08-060	Intervention. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-060, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
10-08-260	Petition for rulemaking—Form, content and filing. [Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-260, filed 6/15/89.] Repealed by 99-20-115, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080.
10-08-261	Petition for rulemaking—Consideration and disposition. [Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-261, filed 6/15/89.] Repealed by 99-20-115, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080.

WAC 10-08-001 Declaration of purpose. (1) Chapter 10-08 WAC contains the model rules of procedure which RCW 34.05.250 requires the chief administrative law judge to adopt for use by as many agencies as possible. The model rules deal with general functions and duties performed in common by the various agencies. The model rules supplement Administrative Procedure Act provisions which contain grants of rulemaking authority to agencies. It is not the purpose of the model rules to duplicate all procedural provisions of the Administrative Procedure Act. This chapter sets forth general rules applicable to proceedings before many state agencies. It should be read in conjunction with the provisions of the Administrative Procedure Act (chapter 34.05 RCW) and with any administrative rules governing adjudicative proceedings which have been adopted by the particular agency.

(2) Except to the extent an agency is excluded from chapter 34.05 RCW or parts of chapter 34.05 RCW, each agency must adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from these model rules must include in the order of adoption a finding stating the reasons for variance.

(3) Adoption of these 1999 amendments to the model rules does not invalidate any variances in rules adopted by agencies between the effective date of the 1988 amendments to the Administrative Procedure Act and the effective date of these 1999 amendments to the model rules.

(4) In the absence of other rules to the contrary, these model rules shall govern any adjudicative proceedings under the Administrative Procedure Act.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-001, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-001, filed 6/15/89.]

WAC 10-08-035 Adjudicative proceedings—Application. An application for an adjudicative proceeding may be on a form provided by the agency for that purpose or in other writing signed by the applicant or the applicant's representative. The application for an adjudicative proceeding should specify the issue to be decided in the proceeding.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-035, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-035, filed 6/15/89.]

WAC 10-08-040 Adjudicative proceedings—Notice of hearing. (1) In any adjudicative proceeding all parties shall be served with a notice of hearing within the time required by law governing the respective agency or proceeding. If there is no requirement under other law, all parties shall be served with a notice of hearing not less than seven days before the date set for the hearing. The notice shall include the information specified in RCW 34.05.434. If the hearing is to be conducted by teleconference call, the notice shall so state.

(2) The notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and there will be no cost to the party or witness. The notice shall include a form for a party to indicate whether the party needs an interpreter and to identify the primary language or hearing impaired status of the party.

(3) Defects in the notice may not be waived unless:

(a) The presiding officer determines that the waiver has been made knowingly, voluntarily and intelligently;

(b) The party's representative, if any, consents; and

(c) If a party is an impaired person, the waiver is requested through the use of a qualified interpreter.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-040, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-040, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. 85-22-032 (Order 4), § 10-08-040, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-040, filed 11/1/82.]

WAC 10-08-045 Adjudicative proceedings—Notice to limited-English-speaking parties. (1) When an agency is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, either:

(a) Shall be written in the primary language of the party; or

(b) Shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-045, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-045, filed 6/15/89.]

WAC 10-08-050 Adjudicative proceedings—Assignment of administrative law judge—Motion of prejudice.

(1) Whenever a state agency as defined in RCW 34.12.020(4) conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the agency shall use one of the following methods for requesting assignment of an administrative law judge:

(a) Not less than twenty days prior to the date of the hearing, notify the chief administrative law judge or his or her designee of the date, time, and place of the hearing and request assignment of an administrative law judge to preside over the hearing, or

(b) File with the office of administrative hearings a copy of the hearing file, which filing shall be deemed to be a request for assignment of an administrative law judge to issue the notice of hearing and preside over the hearing, or

(c) Schedule its hearings to be held at times and places reserved and provided to the agency for that purpose by the office of administrative hearings.

(2) Motions of prejudice with supporting affidavits under RCW 34.12.050 must be filed at least three days prior

(2005 Ed.)

to the hearing or to any earlier stage of the adjudicative proceeding at which the administrative law judge may be required to issue a discretionary ruling. If the notice of hearing does not state the name of the presiding administrative law judge, the chief administrative law judge or his or her designee shall make such assignment at least five days prior to the hearing and shall disclose the assignment to any party or representative making inquiry. Subsequent motions of prejudice filed by the same party in the same proceeding shall be ruled upon by the chief administrative law judge or his or her designee.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-050, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-050, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-050, filed 11/1/82.]

WAC 10-08-080 Computation of time. In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

[Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-080, filed 11/1/82.]

WAC 10-08-083 Notice of appearance. If a party is represented, the representative should provide the presiding officer and other parties with the representative's name, address, and telephone number. The presiding officer may require the representative to file a written notice of appearance or to provide documentation that an absent party has authorized the representative to appear on the party's behalf. If the representative is an attorney admitted to practice in this state, the attorney shall file a written notice of appearance and shall file a notice of withdrawal upon withdrawal of representation.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-083, filed 10/6/99, effective 11/6/99.]

WAC 10-08-085 Consolidation of proceedings. If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon his or her own motion, the presiding officer may, in his or her discretion, consolidate the proceedings.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-085, filed 10/6/99, effective 11/6/99.]

WAC 10-08-090 Adjudicative proceedings—Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other par-

ties of the request. The request for a continuance shall state whether or not all other parties agree to the continuance. If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-090, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-090, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-090, filed 11/1/82.]

WAC 10-08-110 Adjudicative proceedings—Filing and service of papers. (1) Filing.

(a) Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at any office of the agency. Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

(b) The following conditions apply for filing papers with the presiding officer by fax:

(i) As used in this chapter, "fax" means electronic telefacsimile transmission.

(ii) Papers may be filed by fax with the presiding officer. Filing by fax is perfected when a complete legible copy of the papers is reproduced on the presiding officer's fax machine during normal working hours, excluding weekends and holidays. If a transmission of papers commences after these office hours, the papers shall be deemed filed on the next succeeding business day.

(iii) Any papers filed by fax with the presiding officer should be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the papers relate, and indicating the date of and the total number of pages included in the transmission.

(iv) Papers filed by fax should not exceed fifteen pages in length, exclusive of any cover page.

(v) The party attempting to file the papers by fax bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the fax is not received in legible form, it will be considered as if it had never been sent.

(vi) The original of any papers filed by fax should be mailed to the presiding officer within twenty-four hours of the time that the fax was sent. The presiding officer has discretion to require this.

(c) The filing of papers with the presiding officer by electronic mail ("e-mail") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows.

(2) Service.

(a) All notices, pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(b) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial parcel delivery company.

(c) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and

addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(3) Proof of service. Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-110, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-110, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-110, filed 11/1/82.]

WAC 10-08-120 Adjudicative proceedings—Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(a) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-120, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-120, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-120, filed 11/1/82.]

WAC 10-08-130 Adjudicative proceedings—Prehearing conference. (1) The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the presiding officer may, in his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

(5) Nothing in this rule shall be construed to limit the right of an agency to attempt informal settlement of an adjudicative proceeding at any time.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-130, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-130, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-130, filed 11/1/82.]

WAC 10-08-135 Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-135, filed 10/6/99, effective 11/6/99.]

WAC 10-08-140 Adjudicative proceedings—Evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(2005 Ed.)

(2) Where practicable, the presiding officer may order:

(a) That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the agency shall appear, except with the permission of the agency, as an expert witness on behalf of other parties in a proceeding in which he or she previously took an active part in the investigation as a representative of the agency.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking all testimony previously given by such witness on related matter.

(6) Any party bound by a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-140, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-140, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-140, filed 11/1/82.]

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the presiding officer shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not

be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose sole function is to interpret at administrative hearings.

(3) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(4) If at any time during the proceeding, in the opinion of the impaired or non-English-speaking person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the presiding officer shall appoint another interpreter.

(5) Mode of interpretation.

(a) Interpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(6) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(7) The presiding officer shall explain to the non-English-speaking party that a written decision or order will be issued in English, and that the party may contact the interpreter for an oral translation of the decision and that the translation itself is at no cost to the party. The interpreter shall provide to the presiding officer and the party the interpreter's telephone number. The telephone number shall be attached to the decision or order mailed to the party. A copy of the deci-

sion or order shall also be mailed to the interpreter for use in translation.

(8) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(9) The agency involved in the hearing shall pay interpreter fees and expenses.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-150, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 93-10-097, § 10-08-150, filed 5/5/93, effective 6/5/93; 89-13-036 (Order 6), § 10-08-150, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. 85-22-032 (Order 4), § 10-08-150, filed 10/31/85.]

WAC 10-08-160 Adjudicative proceedings—Testimony under oath or affirmation. (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the presiding officer may require the witness to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-160, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-160, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. 85-22-032 (Order 4), § 10-08-160, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-160, filed 11/1/82.]

WAC 10-08-170 Adjudicative proceedings—Reporting—Recording. All hearings shall be recorded by manual, electronic, or other type of recording device.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-170, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-170, filed 11/1/82.]

WAC 10-08-180 Adjudicative proceedings—Teleconference hearings. (1) The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the presiding officer, to see the entire proceeding while it is taking place. However, the presiding officer shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

(2) Documentary evidence shall be submitted in advance as provided in WAC 10-08-140(2).

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-180, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-180, filed 6/15/89. Statutory Authority: RCW 34.12.080, 34.04.020 and 34.04.022. 87-13-036

(Order 5), § 10-08-180, filed 6/15/87. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-180, filed 11/1/82.]

WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices. Photographic and recording equipment shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as he or she deems necessary to prevent disruption of the hearing.

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-190, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-190, filed 11/1/82.]

WAC 10-08-200 Adjudicative proceedings—Presiding officer. The presiding officer shall have authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 34.05.446;
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on motions for summary judgment;
- (6) Rule on offers of proof and receive relevant evidence;
- (7) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (8) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (9) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (10) Take official notice of facts pursuant to RCW 34.05.452(5);
- (11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (13) Issue an order of default pursuant to RCW 34.05.440;
- (14) Hold prehearing conferences;
- (15) Appoint a mediator or serve as mediator, provided that after serving as mediator, the presiding officer shall not conduct the hearing or issue a decision on the matter unless the parties specifically waive any objections to doing so;
- (16) Take any other action necessary and authorized by any applicable statute or rule; and
- (17) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-200, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-200, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-200, filed 11/1/82.]

WAC 10-08-210 Adjudicative proceedings—Initial or final order. Every decision and order, whether initial or final, shall:

- (1) Be correctly captioned as to the name of the agency and name of the proceeding;

(2005 Ed.)

(2) Designate all parties and representatives participating in the proceeding;

(3) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(4) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(5) Contain an initial or final order disposing of all contested issues;

(6) Contain a statement describing the available post-hearing remedies.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-210, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-210, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-210, filed 11/1/82.]

WAC 10-08-211 Adjudicative proceedings—Petition for review and replies. (1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

(2) The petition for review shall be filed with the agency head within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(3) The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within ten days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-211, filed 6/15/89.]

WAC 10-08-215 Adjudicative proceedings—Reconsideration. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the office of the person or persons who entered the order.

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-215, filed 6/15/89.]

WAC 10-08-217 Shortened record on petition for review or appeal. If a petition for review or appeal is made of an initial order, by stipulation the parties may agree to shorten the record to be filed with the entity considering the petition for review or appeal. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved. For petitions for judicial review of a final order, see RCW 34.05.566.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-217, filed 10/6/99, effective 11/6/99.]

WAC 10-08-219 Correction of transcript. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. If the parties agree and the presiding officer approves, transcript correc-

tions may be incorporated into the record at any time during the hearing or after the close of evidence. All corrections must be made within ten calendar days after receipt of the transcript unless the presiding officer allows a different period.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-219, filed 10/6/99, effective 11/6/99.]

WAC 10-08-220 Other law. Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or modify additional requirements imposed by statute, including the Administrative Procedure Act.

[Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-220, filed 11/1/82.]

WAC 10-08-230 Informal settlements. RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(1)(a) All agencies and persons are strongly encouraged to explore early, informal resolution to disputes whenever possible. Any person whose interest in a matter before an agency may be resolved by settlement shall communicate his or her request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the agency requires additional information to resolve the matter informally, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations; Provided, however, that any time limit applicable to filing an application for an adjudicative proceeding shall not be extended because settlement attempts are pending.

(b) In the event an early, informal resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2)(a) If settlement of an adjudicative proceeding may be accomplished by informal negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding. Settlement shall be concluded by:

- (i) Stipulation of parties or
- (ii) Withdrawal by the applicant of his or her application for an adjudicative proceeding or
- (iii) Withdrawal by the agency of the agency action which is the subject matter of the adjudicative proceeding.

(b) A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. When an adjudicative proceeding has been settled by stipulation, the agency head, the agency head's designee, or the presiding officer shall enter an order in conformity with the terms of the stipulation.

(c) When an adjudicative proceeding has been wholly or partially settled by withdrawal, the presiding officer shall enter an order dismissing the adjudicative proceeding, or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-230, filed 6/15/89.]

WAC 10-08-250 Declaratory orders—Form, content and filing. A petition for a declaratory order shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the (name of agency)." On the left side of the page below the foregoing the following captions shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the relief sought by the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the agency.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-250, filed 6/15/89.]

WAC 10-08-251 Declaratory orders—Procedural rights of persons in relation to petition. If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the agency shall give not less than seven days advance written notice of the proceedings to the petitioner and all persons described in RCW 34.05.240(3). The notice shall contain the time, date, place, and nature of the proceedings and shall describe how interested persons may participate in the proceeding. Pursuant to RCW 34.05.240(7), the agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party if the person does not consent in writing to the determination of the matter by a declaratory ruling proceeding.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. 99-20-115, § 10-08-251, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-251, filed 6/15/89.]

WAC 10-08-252 Declaratory orders—Disposition of petition. A declaratory order entered by an agency or a decision by the agency to decline to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3).

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-252, filed 6/15/89.]

Chapter 10-12 WAC

COMPLIANCE WITH STATE ENVIRONMENTAL POLICY ACT

WAC

10-12-010 Purpose.
10-12-020 Application.

WAC 10-12-010 Purpose. The purpose of this chapter is to comply with and implement RCW 43.21C.120 directing every state agency to adopt rules pertaining to the integration of the policies and procedures of the State Environmental Policy Act into the various programs under its jurisdiction for implementation.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 43.21C.120. 99-20-115, § 10-12-010, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 43.21C.120. 82-22-052 (Order 3), § 10-12-010, filed 11/1/82.]

WAC 10-12-020 Application. Pursuant to WAC 197-11-800, the office of administrative hearings has reviewed its authorized activities and found them to be exempt under the provisions of chapter 197-11 WAC.

[Statutory Authority: RCW 34.05.020, 34.12.030 and 43.21C.120. 99-20-115, § 10-12-020, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 43.21C.120. 82-22-052 (Order 3), § 10-12-020, filed 11/1/82.]

Chapter 10-16 WAC

COMPLAINT PROCEDURES

WAC
10-16-010

Procedure for complaints regarding improper conduct of an administrative law judge.

WAC 10-16-010 Procedure for complaints regarding improper conduct of an administrative law judge. (1) Administrative law judges must at all times adhere to the fundamental principles of law, fairly and equitably. Administrative law judges should be fair in their rulings and should conduct the proceedings in a judicious manner.

(2) Any interested party to an administrative proceeding may file a complaint alleging improper conduct of an administrative law judge. For purposes of this section, an interested party is a person who has a right to receive notice of the administrative hearing.

(3) A complaint concerning a decision or order shall be handled through the appeal or petition for review process. This includes initial or final orders and interim orders or discretionary rulings from which further appeal may be taken.

(4) A complaint concerning the conduct of an administrative law judge, apart from a decision from which further appeal may be filed, shall be in writing and sent to the supervising administrative law judge.

(5) The written complaint must set forth in detail all pertinent facts and information. It shall include, among other things, the name of the administrative law judge, the date of the incident, the individuals present, and any other information which would assist in investigation of the complaint. The complaint should be no more than five pages.

(6) Within ten days of receipt of a written complaint, the supervising administrative law judge shall send a letter acknowledging receipt of the complaint. The supervising administrative law judge shall conduct an investigation of the complaint. For matters no longer pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response to the complaining party within thirty days of receipt of the complaint. However, for matters pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response within thirty days after issuance of the administrative law judge's decision. If additional time is needed, the supervising administrative law judge shall notify the complaining party in writing and indicate an expected response date.

(7) If, after investigation, the complaint is found to have merit, the supervising administrative law judge shall take appropriate corrective action. If disciplinary action is warranted, it shall be handled internally subject to the individual's privacy rights as in other personnel matters.

(8) Should the complaining party not be satisfied with the result of the investigation, he or she may request review of the complaint by the chief administrative law judge. The chief administrative law judge shall review all facts and

information pertinent to the complaint and issue a written response. The response of the chief administrative law judge shall be final.

(9) Any inquiries concerning the grievance procedure may be made through the administrative office or any field office of the office of administrative hearings. A directory listing the names and mailing addresses of supervising administrative law judges, deputy chief administrative law judges and the chief administrative law judge will be available through these offices.

[Statutory Authority: RCW 34.05.020 and 34.12.030. 99-20-115, § 10-16-010, filed 10/6/99, effective 11/6/99.]

Chapter 10-20 WAC

FIREARMS AND WEAPONS IN ADMINISTRATIVE HEARINGS

WAC

10-20-010	Firearms, weapons prohibited in administrative hearings.
10-20-020	Notice of prohibited weapons.
10-20-030	Sanctions for possession of weapons.

WAC 10-20-010 Firearms, weapons prohibited in administrative hearings. (1) Firearms or other dangerous weapons are prohibited at all facilities owned, leased, or operated by the office of administrative hearings and in rooms where the office of administrative hearings is conducting an administrative hearing. This prohibition applies to all parties or witnesses at hearings, all office of administrative hearings employees, and all other persons present. However, it does not apply to law enforcement personnel, security personnel, or military personnel, all while engaged in official duties.

(2) As used in this chapter, "firearm or other dangerous weapon" means any firearm as defined in RCW 9.41.010, explosive as defined in RCW 70.74.010, or weapon listed in RCW 9.41.250.

(3) Possession of a valid concealed weapons permit is not a defense to the prohibition in this section.

(4) This prohibition does not apply to lawful firearms or other lawful weapons while confined to private motor vehicles in parking areas at hearings facilities.

(5) This prohibition does not apply to firearms or other dangerous weapons offered as evidence in an administrative hearing.

[Statutory Authority: RCW 34.12.030(6) and 34.12.080. 05-03-003, § 10-20-010, filed 1/5/05, effective 2/5/05.]

WAC 10-20-020 Notice of prohibited weapons. Notice that firearms and other dangerous weapons are prohibited shall be posted conspicuously in the waiting area of all office of administrative hearings offices and shall be included with every notice of hearing issued by the office of administrative hearings.

[Statutory Authority: RCW 34.12.030(6) and 34.12.080. 05-03-003, § 10-20-020, filed 1/5/05, effective 2/5/05.]

WAC 10-20-030 Sanctions for possession of weapons. Any person in possession of a firearm or other dangerous weapon at facilities owned, leased, or operated by the office of administrative hearings or in rooms being used by the office of administrative hearings for administrative hearings may be excluded from the hearings facility or room, may be held in default from the hearing, and may face any other applicable legal consequences.

[Statutory Authority: RCW 34.12.030(6) and 34.12.080. 05-03-003, § 10-20-030, filed 1/5/05, effective 2/5/05.]

A

ACADEMIC YEAR—Defined 192-210-010

ADJUSTMENTS AND REFUNDS 192-330-100

ADMINISTRATIVE FUND

 Unemployment Compensation Fund..... 192-12-170

 (see also UNEMPLOYMENT COMPENSATION ADMINISTRATIVE FUND)

ADMINISTRATIVE PROCEDURE ACT

 Model rules of procedure

 Notice of hearing 10-08-040

 Motion of prejudice 10-08-050

 Interpreters 10-08-150

 Filing and service of papers 10-08-110

 Initial or final order 10-08-210

 Presiding officers—Disqualification, substitution 10-08-200

 Rules of evidence—Cross-examination 192-04-110

 10-08-140

 Subpoenas, discovery, and protective orders 10-08-120

 Time for filing petition for review 192-04-170

ADVISEMENT ORDER 192-04-175

AGGRIEVED PARTY 192-04-063

AGRICULTURAL LABOR 192-12-365

APPLICATION OF TAX PAYMENTS 192-310-025

APPEALS

 Appeals to, where filed..... 192-04-060

 Benefit claim determination 192-04-050

 Benefit overpayment liability determination 192-04-050

 Decisions—Contents 192-04-150

 Definitions 192-04-020

 Denial of benefits 192-04-050

 Experience Rating Determination 192-04-050

 Experience Rating Redetermination 192-04-050

 Filing not to be refused..... 192-12-142

 Interested parties..... 192-04-040

 Mailed—Time limitation 192-04-060

 Petitions for hearing—Right to notice 192-04-050

 Procedures for appeals under federal programs 192-04-030

 Records of appeals..... 10-08-170

 Redetermination (benefits) to correct error 192-04-050

 Untimely appeal..... 192-04-090

AVAILABILITY FOR WORK

 Suitable work factors..... 192-170-050

 (see also REPORTING REQUIREMENTS)

B

BENEFITS

 Accepting bona fide job offer..... 192-150-050

 Adequate notice, providing 192-120-035

 Application, notice of filing 192-130-050

 Applying for benefits..... 192-110-005

 Backdating—Initial Determination 192-16-005

 Claim Cancellation 192-110-210

 Claim for benefits..... 192-140-005

 Conditional payment 192-120-050

 Conditional payment overpayment—

 claimant liable for repayment 192-23-900

 Continued claim definitions 192-100-020

 Determination notice, mailing 192-12-320

 Effective date of claim defined 192-100-035

 Eligibility, notification of question 192-120-030

 Filing not to be refused..... 192-12-142

 Filing weekly claims..... 192-140-005

 Initial allowance—Employer appeal..... 192-12-153

 Maximum benefits payable 192-110-200

 Not a determination of allowance 192-12-151

 Notice to employer 192-130-060

 Mailing addresses..... 192-130-065

 Overpayment of, credit to employer's account 192-12-156

 Payment of benefits (notice to employee) 192-12-310

 Payment of after appeal or review..... 192-12-154

 192-12-155

 Payment of to interstate claimants 192-110-010

 Payment to partially unemployed persons and

 stand-by workers..... 192-110-015

 Personal identification number (PIN) 192-140-010

 Qualifying after denial..... 192-150-085

 Reasonably prudent person defined..... 192-100-010

 Reopening a claim 192-110-050

 Reporting in person, requirement 192-140-020

 Reasonable assurance decision 192-210-015

 School Enrollment 192-200-005

 Separation issues, predetermination procedure 192-130-080

 Waiting period 192-110-005

 Verifying identity..... 192-110-020

BENEFIT CHARGE (see EXPERIENCE RATING)

BENEFIT YEAR

 Backdating a claim..... 192-16-005

 Definition of initial separation from employment..... 192-16-004

C

CHILD SUPPORT OBLIGATIONS DEDUCTED AND WITHHELD 192-16-050

CLAIMANT NOTICES

 Adequate notice provided 192-120-035

 Claimant information booklet 192-120-010

 Conditional payment of benefits..... 192-120-050

 Eligibility for benefits questioned 192-120-030

 Eligibility interview 192-120-040

 Information for claimants 192-120-001

 Presentation of benefit rights 192-120-020

COLLECTIONS AND REFUNDS

 Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150 192-330-100

COMMISSIONER APPROVED TRAINING..... 192-12-186

 192-200-020

 Benefits while in training..... 192-200-030

 Defined..... 192-200-010

CONTRACTOR

 Exceptions to liability—definitions 192-100-510

 Liability for contributions, interest, & penalties 192-100-510

CONTRIBUTIONS

 Application of payments 192-310-025

 Delinquent in contribution payments..... 192-310-030

 Due Date 192-310-020

 Reports and Contributions subject to penalty..... 192-310-030

 Tax payments 192-310-020

 When due and payable 192-310-020

D

DELINQUENT PREDECESSOR TAXES 192-320-060

DEPOSITIONS 192-04-130

E

EDUCATIONAL EMPLOYEES

 Definitions..... 192-210-005

EMPLOYER/EMPLOYING UNIT

 Joint accounts..... 192-300-180

 Posting of Notices 192-310-100

 Records..... 192-310-050

 Records—Farm operator..... 192-310-055

 Reports

 Application of payments 192-310-025

 Defining hours worked 192-310-040

 Failure to report hours 192-310-035

 Mandatory filing..... 192-310-010

 Subject to penalty 192-310-030

 Tax payments..... 192-310-020

EXPERIENCE RATING AND BENEFIT CHARGING

 Charges to separating employer..... 192-320-075

 Relief of benefit charges 192-320-065

 Relief of charges due to a voluntary quit..... 192-320-070

EXTENDED BENEFITS

 How to apply for an extension 192-240-015

 How to qualify (marital or domestic) 192-240-035

 Job search requirements..... 192-240-030

 Moving out of the area 192-240-045

 Penalties 192-240-040

 Regular shareable benefits defined 192-240-010

 Suitable work provisions 192-240-020

 192-240-025

I

INTERESTED PARTIES 192-04-04
 192-130-070

J

JOB SEARCH REQUIREMENTS
 Illness or disability requirements 192-180-012
 Job search requirements—Directives 192-180-010
 192-180-040
 Job search review interviews 192-180-025
 Monitoring job search activities 192-180-020
 Penalty for not looking for work 192-180-030
 Registration for work 192-180-005
 Tracking job search activities 192-180-015

JOB SEPARATIONS
 Misconduct
 Definitions—Misconduct and gross misconduct 192-150-205
 Discharge for gross misconduct or felony or
 gross misdemeanor 192-150-220
 Discharge for misconduct—Responsibility for
 providing information 192-150-215
 General provisions—Misconduct and gross misconduct 192-150-200
 Willful or wanton disregard 192-150-210
 Voluntarily Leaving Work (quit), because of
 Accepting bona fide job offer 192-150-050
 Change that violates religious or sincere moral beliefs 192-150-140
 Change in worksite 192-150-125
 Disability—Notice to employer 192-150-060
 Employer initiated layoff 192-150-100
 Employer-initiated mandatory transfer 192-150-065
 Illegal activities at worksite 192-150-135
 Illness or disability 192-150-055
 Military initiated mandatory transfer 192-150-110
 Reduction in compensation 192-150-115
 Reduction in hours 192-150-120
 Worksite safety 192-150-130
 Separation considered a refusal of new work 192-150-150

JOINT ACCOUNTS 192-300-180

L

LEAVING WORK (see JOB SEPARATIONS)

M

MASTER APPLICATION, EMPLOYER FILING 192-310-010

N

NOTICES
 Denial or allowance of benefits 192-12-320

O

OVERPAYMENT OF BENEFITS
 Fault provisions 192-220-020
 Interest charges—Definitions 192-28-150
 Minimum payment calculation 192-28-130
 Recovery of (Notification of right to appeal) 192-28-125

OWNERS OF A BUSINESS NOT COVERED 192-300-190

P

PARTIAL SUCCESSORS, Requirements 192-320-050

PARTIAL UNEMPLOYMENT 192-110-015

PETITION
 Definition 192-04-020
 For commissioner's review 192-04-060
 Mailed, when deemed filed & received 192-04-060
 Filing not to be refused 192-12-142

PREDECESSOR-SUCCESSOR
 Relationship defined 192-300-050
 Transfers through intermediaries 192-320-055

PRIVACY, Records & Information 192-15-010
 192-15-020

PUBLIC DISCLOSURE AND PRIVACY OF INFORMATION
 Commissioner's review of denials of public
 records requests 192-15-050
 Consent to release of records of information—
 RCW 50.13.100 192-15-090
 Public records--Definition 192-15-020

PUBLICATION AND POSTING OF NOTICES
 Rules 192-04-010

R

REASONABLE ASSURANCE
 Existence of 192-210-015
 For instructional, research, or principal administrative
 staff at a community or technical college 192-210-020

RECIPROCAL COVERAGE ARRANGEMENT 192-300-150

RECORDS
 Destruction of 10-04-090
 Exemptions to non-release 10-04-070
 Release allowed to 10-04-050

REEMPLOYMENT SERVICES – DIRECTIVE TO REPORT

REFUNDS, ADJUSTMENTS AND 192-330-100

REGISTRATION FOR WORK 192-180-005

REGULATIONS
 Employer posting of notice 192-310-100
 Publication (distribution) of 192-04-010

REMUNERATION
 Cash value 192-310-070
 Tips as wages 192-310-060

REASONABLE ASSURANCE (see SCHOOL EMPLOYEES)

RETIREMENT PAYMENTS
 Failure to respond to a request for pension information 192-23-350
 Lump sum payments 192-16-025
 Pension deduction computation 192-16-030

REPORTING REQUIREMENTS—CLAIMANTS
 Certify not able to or available for work 192-140-200
 Failure to—
 Attend workshop or training 192-180-040
 Establish able and available for work 192-140-070
 Establish active search for work 192-140-075
 Meet work search requirements 192-140-080
 Report in person 192-140-030
 Report for reemployment services 192-140-090
 Respond defined 192-140-025
 Respond regarding attendance at school 192-140-120
 Respond regarding a discharge from work 192-140-100
 Respond regarding late claim information 192-140-085
 Respond to request results in a presumption
 of disqualification 192-23-001
 Return to full time work or report full-time hours 192-140-210

REPORTS REQUIRED OF EMPLOYERS
 Application of payments 192-310-025
 Defining hours worked 192-310-040
 Failure to report hours 192-310-035
 Mandatory filing 192-310-010
 Subject to penalty 192-310-030
 Tax payments 192-310-020

RULES
 Distribution of, to public 192-04-010

S

SCHOOL EMPLOYEES
 Academic year, defined 192-210-010
 Definitions 192-210-005
 Failure to respond regarding request for reasonable
 assurance of return to work 192-23-301
 Reasonable assurance 192-210-015
 192-210-020
 Substitute teacher, intent 192-16-055

SHARED WORK PROGRAM
 Information for Employees 192-36-010
 Information for Employers 192-36-015
 192-36-020
 192-36-025

SUBPOENA 10-08-120

SUITABLE WORK
 Determination of, factors considered 192-170-050

T	U
TAX AND WAGE REPORT, FILING..... 192-310-010	UNEMPLOYMENT COMPENSATION
TAX PAYMENTS	ADMINISTRATIVE FUND 192-12-170
Application 192-310-025	V
Subject to penalty 192-310-030	VOLUNTARY COVERAGE (Employer)..... 192-300-170
TEMPORARY TOTAL DISABILITY	W
Definitions 192-34-010	WAGES
Exclusions..... 192-34-015	Remuneration included as (tips) 192-310-060
Failure to apply in a timely manner 192-34-020	WEEK DEFINED 192-100-030
Additional injuries 192-34-025	WORK, SUITABLE (see also SUITABLE WORK)
TESTIMONY..... 10-08-160	While in Approved Training..... 192-12-184
TIPS AS WAGES 192-310-060	
TRAINING	
(see also COMMISSIONER APPROVED TRAINING)	
Commissioner approved..... 192-200-020	
Defined (RCW 50.20.043) 192-12-180	
TRAINING BENEFITS	
Aerospace industry employment..... 192-270-020	
Applying for training benefits-requirements..... 192-270-045	
Approving training plans-criteria 192-270-050	
Definitions 192-270-005	
Employment separations 192-270-010	
Enrollment in training 192-270-040	
Fishing industry employment..... 192-270-030	
Forest products industry employment..... 192-270-025	
Funding—Waiting lists 192-270-055	
Occupation in high demand outside labor market 192-270-060	
Satisfactory progress-certification 192-270-065	
Timeframes	
Submitting a training plan 192-270-035	
Enrollment in training..... 192-270-035	
Training plan-modifying 192-270-070	
Unlikely to return to employment 192-270-015	
TRUST FUND	
Withdrawals from..... 192-12-160	