

NEW SECTION

WAC 192-110-115 May I cancel my claim? (1) You will be allowed to cancel your claim within thirty days of the date you applied for benefits if no payment has been issued to you on the claim. The department will advise you of the advantages and disadvantages of canceling a claim.

(2) At his or her discretion, the commissioner may permit cancellation of a claim beyond thirty days of the date you applied for benefits, but only in extreme and unusual circumstances. The denial of a request to cancel a claim beyond thirty days of the date of application is not subject to appeal.

(3) You will not be allowed to cancel your claim if benefits have been paid on the claim, unless the department filed the claim in error.

(4) As provided in RCW 50.20.160, if the department has denied your benefits before canceling your claim, the denial will remain in effect. The department will not make a new decision based on the same issue in a subsequent claim.

AMENDATORY SECTION (Amending WSR 14-06-019, filed 2/24/14, effective 3/27/14)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the informational notice (~~mailed or e-mailed~~) sent to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the informational notice is considered your notification of the eligibility requirements for the training benefits program.

(2) Submitting a training plan.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you have ninety 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 ninety-five calendar days from the date your application for benefits is filed, which represents ninety days plus five days for the informational notice to reach you if sent by regular mail.

(3) Enrollment in training.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you must be enrolled in training within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be one hundred twenty-five calendar days from the date your application for benefits is filed, which represents one hundred twenty days plus five days for the informational notice to reach you if sent by regular mail.

(4) If you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), these time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the time frames established under this section.

(6) If you return to work, and subsequently become unemployed, the time frames described in subsections (2) and (3) begin with the date you file your additional claim for benefits.

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-025 What are the requirements for employers with an approved shared work plan? (1) What information am I responsible for providing to my employees? When your shared work plan is approved, you are responsible for telling your affected employees:

(a) They are approved for participation in the shared work program;

(b) How to apply for shared work benefits; and

(c) How to file their weekly claims.

(2) **What employee fringe benefits do I have to provide while participating in the shared work program?**

(a) You must continue to provide your affected employees with health benefits as though their weekly benefits had not been reduced.

(b) You must continue to provide your affected employees with retirement benefits for defined contribution and defined benefit pension plans under the Internal Revenue Service code. You must maintain these benefits for your shared work employees as though their weekly hours had not been reduced.

(c) You must continue to provide paid vacation, holiday, and sick leave to your affected employees under the same terms and conditions as before their hours were reduced.

(d) If health, retirement, or leave benefits change for your other employees, you can change them for your shared work employees as well.

(e) Other benefits offered to your employees, such as long-term disability and life insurance, are optional. You may choose to provide these benefits but they are not a requirement for participation in the shared work program.

(3) **What is required if the business name is changed?** You must report any change in your business name to the shared work program unit within ten working days.

(4) **What is required if the designated employer representative is changed?** You must notify the shared work unit of the change within ten working days.

(5) **Can I modify an approved shared work plan?** You may request to add additional employees or units of your business after the approved plan start date. Adding new employees or units to an approved plan is subject to the same eligibility review that applied to the original plan. You must notify the shared work unit of any change to the information on your application in writing within ten working days.

(6) **What other information am I responsible for giving the department?** In addition to the application for participation in the program, you are responsible for verifying the information on the shared work payments report sent by the department. You must report any discrepancies to the shared work unit (~~in writing~~) by using the department's online services or by fax within ten working days.

(7) **How many shared work plans may I have?**

(a) You may have more than one shared work plan. We will review each shared work plan application to see if it meets the eligibility requirements. Even if a previous plan was approved, this does not mean subsequent plans are automatically approved.

(b) If your business is approved for a shared work plan, but your employees do not claim shared work benefits during the life of the plan, it will still be treated as one plan.

(c) The commissioner may, at his or her discretion, deny approval of subsequent plans.

(8) **What if my ESD number changes?** You must report the change to the shared work unit within ten working days. A change in ESD number represents a change in employer and the existing shared work plan will be canceled. The successor employer may submit a new shared work plan application to the department for review.

AMENDATORY SECTION (Amending WSR 15-02-051, filed 1/5/15, effective 2/5/15)

WAC 192-140-005 Filing weekly claims for benefits. (1) **How do I file my weekly claim for benefits?** You may file your claim using the department's ~~((automated systems. The term "automated systems" includes the department's unemployment information and weekly claims telephone line or the department's internet web site. You may also file a paper claim. At the agency's discretion, you may be allowed to file a weekly claim with the assistance of a claims center representative))~~ online services or by calling the department's claims center. If you have a physical or sensory disability or are in unusual circumstances that make filing by telephone or online difficult, the commissioner may authorize other methods of filing a weekly claim.

(2) **When do I file my weekly 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))~~ 12:00 a.m. on Sunday and ends at ((midnight)) 11:59 p.m. on Saturday. You must file your claim after the end of the week(s) you are claiming.

(a) File your claim using online services after 12:00 a.m. Sunday following the week you are claiming. If you file by electronic means, your claim is considered filed on the date of successful electronic transmission.

(b) File your telephone ((or internet)) claim after ((12:01)) 12:00 a.m. Sunday, but before 4:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before 4:00 p.m. on the last working day of the week.)

~~((b) If you file by paper,))~~ (c) File your paper claim anytime Sunday through Saturday following the week you are claiming. ((If you file by mail,)) Your claim is considered filed on the postmarked date((. If you file by fax, your claim is considered filed on the date of receipt)) if you mail it.

(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?**

(a) ~~If you do not claim a week, ((you must reopen your claim. See WAC 192-110-050.~~

~~(a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the claims center to reopen your claim))~~ and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four weeks prior to the week in which you contact the department to begin claiming again.

(b) ~~If you ((have received your first payment and not))~~ do not claim a week, and more than four consecutive weeks have elapsed since you last filed a claim, you ((may claim benefits for any of the four weeks prior to the week in which you contacted the claims center to reopen your claim.

~~(c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these))~~ must reopen your claim as provided in WAC 192-110-050. The department will not pay you for any unclaimed weeks unless you show good cause for ((not contacting the claims center earlier to reopen your claim)) the late filing of those claims.

(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, the claims center cannot process a claim unless all questions are answered;~~

~~(c) Your personal identification number if filing by automated system, your signature if you filed in writing or your verbal authorization if you filed with the assistance of a claims center representative;~~

~~(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?)~~ answers to all the questions. The department cannot process a claim ((filed via automated system)) that does not meet ((the)) this requirement((s of subsection (5) of this section and you will receive instructions to contact the claims center. A written claim that does not meet these requirements is incomplete and the department will return it to you with a request for additional information)).

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-010 ((Personal identification number.)) Systems security. (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 set up a))~~ Your password or 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 password or PIN is your responsibility. You are responsible for any payments made as a result of the use of ~~((this))~~ your password or PIN unless you provide evidence showing that the individual using your password or PIN was not authorized to do so. You must establish a new password, or your PIN must be reset if you forget it or if someone else, including an employee of the department, learns ((your PIN)) of it. You are responsible for either:

(a) Accessing the department's online services to establish a new password; or

(b) Contacting the ((unemployment claims telecenter to set up a new PIN or setting up a new PIN using the department's internet site)) department to reset your PIN.

AMENDATORY SECTION (Amending WSR 99-08-073, 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, you will be ineligible for benefits (~~((will be denied))~~) under RCW 50.20.010 (1)(a) 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.

AMENDATORY SECTION (Amending WSR 99-08-073, 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.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-040 What happens if I do not provide details about my employment when filing my weekly claim? (1) The department will presume you are not unemployed under RCW 50.04.310 if you:

(a) Report that you had work and earnings for one or more weeks;

(b) Fail to provide employer name and address; and

(c) Do not respond to a request for information.

(2) Further, the department will presume you are not unemployed under RCW 50.04.310 if:

(a) You report that you will have earnings for a week not yet claimed;

(b) Subsequently claim benefits for the week without providing employer name and address and the amount of earnings; and

(c) Do not respond to a request for information.

(3) The department will (~~deny benefits under this section~~) presume you are not unemployed based on RCW 50.20.010(1) and 50.04.310. This ((denial applies only to the week(s) in which work and earnings information is incomplete)) presumption will continue until you provide the department with the information necessary to determine whether you are unemployed within the meaning of the statute.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

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.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

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 that may be required ~~((under))~~ by the department as provided in 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.

AMENDATORY SECTION (Amending WSR 05-01-076, 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) and 50.20.240.

(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.

AMENDATORY SECTION (Amending WSR 05-01-076, 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 ask to 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.

AMENDATORY SECTION (Amending WSR 05-01-076, 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 and are eligible for dispatch and referral according to union rules;

(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~~) **Penalty.** 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) Conflicting employment or 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.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-100 What happens if I do not respond to a request for information about a discharge from work? (1) If you do not respond to a request for information about a discharge from work and if you:

(a) Have not given the department enough information to identify or contact the employer, the department will presume the employer discharged you for misconduct connected with your work. The department will deny benefits under RCW 50.20.066.

(b) Have given the department enough information to contact the employer, the department will not deny benefits unless a preponderance of evidence shows that you were discharged for misconduct connected with your work or the separation was for another disqualifying reason.

(2) If benefits are denied due to misconduct, the denial (~~is for an indefinite period of time and~~) will continue for ten weeks and until you earn ten times your weekly benefit amount in employment that is covered by Title 50 RCW.

AMENDATORY SECTION (Amending WSR 05-01-076, 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)(e)~~).

(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)(e)~~).

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-130 What happens if I do not respond to a request for information about holiday ~~((or))~~ vacation ~~((pay))~~, sick, or other paid time off? (1) The department will presume you are not unemployed as provided in RCW 50.04.310 if you report that you received holiday

~~((or))~~ vacation, sick, or other paid time off pay and the respective amount paid, and do not respond to a request for specific information about the holiday ~~((or))~~ vacation ~~((pay))~~ , sick, or other paid time off.

(2) ~~((If you report that you will have holiday or vacation pay for a week not yet claimed and subsequently claim benefits for the week without providing employer name and address and the amount of payment, and do not respond to a request for information, the department will presume you are not unemployed as provided in RCW 50.04.310.~~

~~(3))~~ The department will deny benefits under RCW 50.20.010(1) and 50.04.310. This denial applies only to the week(s) in which holiday ~~((or))~~ vacation, paid time off, or sick pay information is incomplete.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-140 What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment? (1) If your eligibility for benefits is based on services to an educational institution, ~~((your employer has provided information that))~~ evidence shows you have reasonable assurance of returning to work after the school holiday or break, and you do not respond to a request for information about reasonable assurance, the department will presume that such assurance exists.

(2) The department will deny benefits under RCW 50.44.050. This denial applies to the period between academic years or terms, and during holiday or vacation periods.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-145 What happens if I do not respond to a request for ~~((pension))~~ information about my retirement pay? (1) The department will presume you are receiving ~~((a pension))~~ retirement pay in an amount greater than your weekly benefit amount and contributed to only by a base period employer if:

(a) You report that you have applied for ~~((a))~~ retirement ~~((pension))~~ pay or your ~~((pension))~~ retirement pay has changed since your last claim; and

(b) You do not respond to the question concerning ~~((pension))~~ retirement pay information when filing your weekly claim.

(2) The department will ~~((deny))~~ reduce benefits under RCW 50.04.323. This ~~((denial))~~ reduction will continue until you provide the information showing that you are ~~((not ineligible))~~ eligible for benefits under RCW 50.04.323.

AMENDATORY SECTION (Amending WSR 05-01-076, 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)(e) 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~~) reduction applies only to the day or days for which (~~you specifically indicate~~) available information shows 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)(e) 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 subsections (2) and (3) of this section will be issued without delay. The department will not issue a written decision when benefits are reduced under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 05-01-076, 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 informa-

tion 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.~~)

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status? If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed (~~as defined in~~) and benefits will be denied under RCW 50.04.310 (~~and benefits will be denied under RCW 50.20.010~~). This denial (~~is for an indefinite period of time and~~) will continue until you show you are unemployed as defined under RCW 50.04.310.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-010 Repayment terms defined. For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement (~~((mailed to your last known address))~~).

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-230-020 How are cash payments and offsets applied to my overpayment? (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1) of this section, the department will apply cash payments to the outstanding balance in the following order:

(a) Court costs including, but not limited to, filing fees and surcharges paid to the court for their official services, and surcharges and fees collected by the court for distribution to other programs or funds. It does not, however, apply to surcharges paid to the court under RCW 40.14.027 which are applied under (f) of this subsection.

(b) Interest.

(c) Penalties based on fraud.

(d) Charges for payments dishonored by nonacceptance or nonpayment.

(e) Overpaid benefits.

~~((e))~~ (f) Surcharge assessed under RCW 40.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

(4) The department will charge twenty-five dollars for each dishonored payment you submit. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-030 How is the minimum payment calculated? The department will calculate your minimum monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is ((mailed)) sent, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance when the billing statement is ((mailed)) sent, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-040 When are interest charges added to my overpayment? (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) In addition to the principal amount, interest will accrue based on the total of the overpayment including, but not limited to, interest, penalties, court costs, charges for dishonored payments, and related charges or fees.

(5) If the overpayment includes both fraud and nonfraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

~~((+5))~~ (6) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or collection of interest charges for overpayments not based on fraud.

~~((+6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.)~~ (7) Interest is calculated on a monthly cycle as follows:

(a) For fraud overpayments, interest accrues beginning on the date the determination of fraud is effective.

(b) For nonfraud overpayments, interest accrues immediately, beginning after the due date.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-090 May I repay an overpayment by offset against my benefits? (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. If the new balance available on your current benefit year is greater than the balance of your overpayment, you can choose the amount of benefits to be offset from each payment. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-230-100 What amount will be offset from my benefits to repay the overpayment? (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-230-030, the principal amount will be deducted from benefits payable for any week(s) you claim. Interest, penalties, surcharges, ~~((and))~~ court costs, and charges for dishonored payments will not be deducted from benefit payments; they must be repaid.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim ~~((cancelled))~~ canceled, 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 ~~((canceling))~~ canceling an existing claim to file a new claim. See WAC 192-110-115.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed a portion of two or more payments as provided in WAC 192-230-030. If you have missed a portion of 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))~~, or such other percentage

you request, up to one hundred percent of benefits payable ((for each week you claim)). The ((fifty)) percent ((deduction)) deducted is based on your total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(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.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-230-110 May I negotiate with the department to repay less than the full amount of my benefit overpayment?—RCW 50.24.020.

(1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (4) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(4) A negotiated settlement for less than the full amount owed will not be considered when:

(a) The overpayment decision was issued by a state other than Washington; or

(b) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(5) The department's decision to accept or reject a settlement offer is not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer ((at a later date)) if your circumstances change.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-230-130 How do I make a negotiated settlement offer?

(1) You may contact the department's unemployment benefits collection unit (~~in writing or by telephone~~) and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(2) Settlement offers may also be made by authorized department staff.

AMENDATORY SECTION (Amending WSR 14-06-019, filed 2/24/14, effective 3/27/14)

WAC 192-120-010 Claimant information booklet. (1) The department will publish and post on its web site an information booklet for unemployment insurance claimants that provides basic information on the laws, rules, and procedures for unemployment insurance benefit claims. Single copies of the booklet will be available to the public at no charge.

(2) The department will send claimants who file an application for benefits a link to the booklet by e-mail or other electronic means. If the department does not have the ability or authorization to notify a claimant by e-mail or other electronic means, the department will ~~((mail))~~ send the claimant a written notice containing the link to the web address for the booklet. The department will mail a hard copy of the booklet to any claimant who requests it.

(3) The department will maintain a brief descriptive web address to help claimants locate the booklet online. The link to the booklet will be prominently displayed on the department's web site.

(4) Each claimant is responsible for filing weekly claims and following all instructions as required in the booklet for the duration of the claim unless other specific information is ~~((given))~~ provided to the claimant ~~((in-writing))~~ by the department.

(5) The department will assist any person who advises the department that he or she is having difficulty understanding the booklet.

(6) If a claimant does not ask for help in understanding the booklet, he or she will be presumed to understand its contents and held responsible for any failure to act as directed by the booklet.

AMENDATORY SECTION (Amending WSR 99-08-073, 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))~~ provided to you, the written information will ~~((apply))~~ prevail.

AMENDATORY SECTION (Amending WSR 99-08-073, 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 five days plus reasonable mailing time (~~plus five working days~~), if any); 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.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-120-035 How will adequate notice be provided? (~~(+)~~)

When you file your weekly claim for benefits by telephone, you will receive a verbal notice if there is a question about your eligibility for benefits. When you file your weekly claim for benefits by (~~internet~~) using the department's online services, a statement will be (~~printed~~) displayed online that there is a question about your eligibility for benefits. (~~(+2) If you do not contact the department by the last working day of the week in which your claim was filed, a written notice will be mailed to your most recent address in our files. 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.~~) You will be provided a minimum of five days, plus reasonable mailing time, if any, to respond to the notice or statement.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

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) At your request, we will hold conditional payments when you are eligible for conditional payment under WAC 192-100-070.

(3) Payment will be issued for any payments withheld under subsection (2) of this section if we determine you are eligible for benefits.

(4) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

AMENDATORY SECTION (Amending WSR 15-02-051, filed 1/5/15, effective 2/5/15)

WAC 192-110-005 Applying for unemployment benefits—General.

(1) **How do I apply for benefits?** ~~((a))~~ You may apply for benefits by:

~~((i))~~ Calling the unemployment claims center listed in your local telephone directory; or

~~((ii))~~ (a) Using the department's internet web site. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.) online services; or

(b) Calling the unemployment claims center; or

(c) If you have a physical or sensory disability, or are in unusual circumstances that make filing by telephone or internet difficult, the commissioner may authorize other methods of applying for benefits.

(2) **When can I apply?**

(a) You may apply online using the department's online services at any time.

(b) You may apply by telephone (excluding state holidays) during the days and hours designated by the department (, even if you are working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.

~~(b) You may apply on the internet at any time).~~

(3) ~~**(When is my claim effective?** Your claim is effective on the Sunday of the week in which you file it.~~

~~(4))~~ **What information am I required to provide?** The minimum information needed to process your application is your:

(a) Legal name; and

(b) 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))~~ eighteen months. Other information may be ~~((requested))~~ required in individual circumstances.

~~((5))~~ (4) 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 we can pay you any benefits for future weeks.

AMENDATORY SECTION (Amending WSR 09-15-014, filed 7/2/09, effective 8/2/09)

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 "paying state." For example:

(a) You are an interstate claimant if you live outside of Washington and file a claim against Washington. Washington will be the paying state on your claim.

(b) You are an interstate claimant if you live in Washington and file a claim against another state. The other state will be the paying state on your claim.

(2) **Where can I apply for benefits?** You can apply for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada. However, if you served in the military during the past ~~((two years))~~ eighteen months, you must physically be in the state of Washington to apply for benefits against Washington.

(3) **How do I apply for benefits?** ~~((a))~~ Use the department's on-line services or call the unemployment claims ~~((telecenter))~~ center in Washington. If you worked in any state other than Washington within the last ~~((two years, an agent will))~~ eighteen months, the department will provide you with information to help you decide which state will pay your claim.

~~((i))~~ (a) If Washington will pay your claim, you may apply using the department's online services or an agent will take your application for benefits over the telephone;

~~((ii))~~ (b) If another state will pay your claim, ~~((an agent will tell you))~~ the department will provide you with contact information for that state regarding how to file your claim with that state.

~~((b) If you worked only in Washington during the previous two years, you may apply for benefits on the internet.)~~

(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 you can establish a new claim against another state. 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, you must file it directly with the state that is paying your claim:

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If ~~((mailed))~~ filed using the postal service or shipping service, your appeal will be considered filed on the postmarked or shipping date.

(b) If another state is paying your claim, file your appeal directly with that state.

All appeal hearings will be conducted by the state that is paying your claim. The paying state will notify you of the date, time, and telephone number or location of the hearing.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-110-020 How will the department verify my identity? When you apply for benefits, ~~((we will ask you questions based on information in our records, such as your work history))~~ the information

you provide must be sufficient for the department to confirm your identity to its satisfaction.

(1) If we can verify your identity with ~~((these questions))~~ this information, we will file your application for benefits.

(2) If we cannot verify your identity ~~((through questioning))~~, we will ~~((send you a verification form*))~~ request additional verification.

(a) If ~~((you complete and return the verification form to the department, and it))~~ the additional information provides satisfactory evidence of your identity, your claim will be effective based on the date ~~((of your first telephone call*))~~ you first applied for benefits, unless it is backdated as provided in WAC 192-110-095.

(b) If ~~((you do not complete or return the verification form, or it))~~ the additional information does not satisfy the department of your identity, we will deny your benefits.

AMENDATORY SECTION (Amending WSR 10-12-026, filed 5/24/10, effective 6/24/10)

WAC 192-110-050 How do I reopen my claim? (1) If you ~~((do not file a claim for one or more weeks))~~ have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) ~~((If it has been fewer than four weeks since you last claimed, you must))~~ You may reopen your claim:

(i) By using the department's online services; or

(ii) By calling the unemployment claims ~~((telecenter and asking an agent to reopen your claim))~~ center.

(b) ~~((If you have not claimed benefits for four or more weeks, you may reopen your claim on the internet or by calling the unemployment claims telecenter. However, you must do so before the last working day of the week (which is usually Friday). Otherwise you must call the unemployment claims telecenter and speak to an agent to reopen your claim.))~~ You must reopen your claim before the end of the week.

(2) Your claim will be reopened effective on Sunday of the week in which you contact the department ~~((except that the effective date for any prior week claimed under WAC 192-140-005(4) will be Sunday of that week))~~ to reopen your claim, unless you ask the department to backdate your reopening date to a prior week. The department will not backdate your reopening date unless you show good cause for not reopening your claim earlier, except as provided in WAC 192-140-005.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may also be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, (~~acting on advice directly from a department employee or its agent on whom a reasonable person would rely,~~) incapacity due to illness or injury, or other serious factors.

(b) "For the convenience of the department" means:

(i) For the purpose of program administration; or

(ii) Those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information(~~(, and you knew or should have known of your redetermination or appeal rights and failed to exercise them)~~).

AMENDATORY SECTION (Amending WSR 09-15-014, filed 7/2/09, effective 8/2/09)

WAC 192-110-112 Applying for a combined wage claim. (1) **What is a combined wage claim?** A combined wage claim is a claim based on wages earned in two or more states. For purposes of this section, "state" means the fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

(2) **Where can I file a combined wage claim?** You can file a combined wage claim against any state in which you have base period wages and qualify for benefits based on combining those wages with wages from another state(s). The state against which you file your claim will be the paying state.

(3) **What is the paying state?** The "paying state" is the state against which you file your combined wage claim. You must have base period employment in that state and qualify for unemployment benefits under that state's laws using combined employment and wages.

(4) **Can I file a combined wage claim against Washington?** Yes. To file a combined wage claim against Washington, you must have base period wages in Washington which, combined with your wages from another state(s), establish a valid Washington claim. If you file your claim against Washington, Washington will be the paying state.

(5) **Do I have to reside or physically be in Washington to file a combined wage claim?** No. The state where you are a resident is not relevant in deciding the paying state.

(6) **Who decides which state is the paying state for a combined wage claim?** You are responsible for deciding which state will be the paying state. If you are potentially eligible for a combined wage claim and you contact the department(~~(, an agent will provide you)~~) using online services or by phone, you will be provided with:

(a) General information about the combined wage program;

(b) Your options for filing a regular or combined wage claim against Washington or another state(s); and

(c) Contact information for other state(s) in which you worked during your base period.

(7) **Am I required to file a combined wage claim?** No. Filing a combined wage claim is voluntary. You may choose to file a claim using only wages from a single state.

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

WAC 192-04-170 Decision of commissioner—Petition for review—Filing—Reply. (1) The written petition for review (~~shall~~) must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, 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 at the same time. 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 acknowledgment date on the petition for review. The commissioner's review office will also (~~mail~~) send 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~~) must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. 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~~) must 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~~) must:

(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.

AMENDATORY SECTION (Amending WSR 10-20-082, filed 9/29/10, effective 10/30/10)

WAC 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review. (1) A written petition for reconsideration and argument in support 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~~) must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555(~~, and to~~). It should also be sent 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.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages. (1) If an employer does not report hours worked and a former employee applies for benefits, the department will ~~((divide the wages earned))~~ estimate the hours worked as follows:

(a) For Washington reportable wages, the department will divide the reported wages by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked;

(b) For all out-of-state wages, the department will divide the reported wages by the federal minimum wage to estimate the hours worked.

(2) If the employer later provides the actual hours worked, the department will recalculate the former employee's claim.

(3) If the claim is voided or benefits are reduced as a result of the recalculation, the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

NEW SECTION

WAC 192-100-037 Mail. (1) The term "mail" is interchangeable with the term "send," which means:

(a) To send or deliver by means of the postal service or other delivery service; or

(b) To transmit, deliver, or distribute by e-mail or other electronic services.

(2) Subsection (1)(b) of this section does not apply to WAC 192-04-210, which requires mailing through the postal service or other delivery service if not personally served.

NEW SECTION

WAC 192-320-077 In which quarter will the department charge employers for unemployment benefits paid to claimants? Benefits will be charged to the quarter containing the first day of the week claimed, regardless of when the department actually pays the claimant for the week claimed.

AMENDATORY SECTION (Amending WSR 03-06-038, 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 using the department's online services or by placing a telephone call to (~~an unemployment claims telecenter~~) the department. The commissioner can authorize other filing methods in unusual circumstances or for the convenience of the department.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation. (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 or for which the department has provided notice of appeal or petition for hearing rights may file ~~((a-written))~~ an appeal or a petition for hearing by using the department's online services, by mailing it to the address indicated on the determination notice or other appealable document, or ~~((sending it))~~ by ~~((fax))~~ faxing it to the ~~((address or))~~ fax number indicated on the determination notice or other appealable document.

The appeal or petition for hearing must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal ~~((and/or))~~ or petition for hearing ~~((shall))~~ must 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, including filing by using the department's online services, in accordance with the provisions of WAC 192-04-170. The petition for review must 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))~~ must be filed in accordance with the provisions of RCW 50.32.025.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-130-050 Notice of filing of application—RCW 50.20.150. Whenever an individual files an initial application for unemployment benefits, or reopens a claim after subsequent employment, a notice will be ~~((mailed))~~ sent 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))~~ must report this information to the ~~((employment security))~~ department ~~((at the address))~~ as indicated on the notice. The information must be reported within ~~((ten days of))~~ five days, plus reasonable mailing time, if any, beginning on the date the notice was ~~((mailed))~~ sent. If the employer does not reply within ~~((ten days))~~ this time frame, the department may allow benefits to the individual, if he or she is otherwise eligible.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be ~~((mailed))~~ sent to:

(a) The claimant's last employer, and
(b) Any prior employer where it has been less than ten weeks since the job separation 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, the department will ~~((mail))~~ send a notice 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, the department will ~~((mail))~~ send a notice to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable 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), the department will ~~((mail))~~ send a notice 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.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-130-065 ~~((Mailing addresses for))~~ **Sending the notice to employer.** The department will ~~((mail))~~ send notices to employers required by RCW 50.20.150 and WAC 192-130-060 as follows:

(1) The department will ~~((mail))~~ send the notice to the last employer of the claimant in the following order:

(a) If the employer requests that the department ~~((mail))~~ send correspondence related to unemployment benefits to a specific address, the department will ~~((mail-the))~~ send a notice to the last employer directly to that address; or

(b) If the employer has notified the department that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the department will ~~((mail-the))~~ send a notice to the last employer directly to that firm; or

(c) If an employer has provided the department with ~~((a-mailing))~~ an address for tax purposes, the department will ~~((mail-the))~~ send a notice to the last employer directly to that address; or

(d) If the employer has not provided the department with ~~((a-mailing))~~ an address, the department will ~~((mail-the))~~ send a notice to the last employer to the address provided by the claimant.

(2) The department will ~~((mail-the))~~ send a notice to any base year employer who has reported wages to the department to the ~~((employer's-mailing))~~ address ~~((of-record))~~ provided by the employer for tax purposes.

(3) ~~((The))~~ A 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))~~ sent in the order specified in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-070 ~~((Mailing-of))~~ **Sending eligibility determinations—RCW 50.20.180.** (1) The department will ~~((mail))~~ send an eligibility decision based on a job separation issue 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) 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) The department will ~~((mail))~~ send an eligibility decision based on an issue other than a separation from employment to an employer if the employer provides relevant information about the claimant's eligibility for a specific week.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-130-080 Procedure—Separation issues. (1) The department will not make a decision on a separation issue (RCW 50.20.050 or 50.20.066) until both the employer and the claimant have had an opportunity to present information and rebuttal, if necessary and appropriate, about the separation.

(2) If an employer does not respond to the notice within ~~((ten))~~ five days, plus reasonable mailing time, if any, as required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the employer ~~((mails))~~ sends separation information to the ~~((unemployment claims telecenter identified on the notice))~~ department after the end of the ~~((ten-day))~~ response period, but before the decision has been made, the department will consider that information before making a decision.

(4) If the employer ~~((submits))~~ sends separation information to the department within thirty days after a decision has been ~~((mailed))~~ sent, 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))~~ date the notice required by WAC 192-130-060 was sent will be considered a request for relief of benefit charges under RCW 50.29.021.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-010 Will I be notified about a potential overpayment? (1) If a potential overpayment exists, the department will provide you with a written overpayment advice of rights 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))~~ sent;

(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, possible sale of real and personal properties, and garnishment of salaries;

(f) An explanation that if you are not at fault, you may request a waiver of the overpayment; and

(g) A statement that you have ~~((ten))~~ five days plus reasonable mailing time, if any, to submit information about the possible overpayment and whether you are at fault. If you do not provide the information within ~~((ten days))~~ this time frame, the department will make a decision based on available information about the overpayment and your eligibility for waiver.

(2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

AMENDATORY SECTION (Amending WSR 13-24-012, filed 11/21/13, effective 12/22/13)

WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed? (1) RCW 50.20.070 provides dollar penalties when fraud is committed and increased disqualification periods when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the criteria in this section.

(2) Once the department ~~((maile))~~ sends a fraud decision, any fraud that is found for weeks filed before, or within fourteen days after, the ~~((mailing))~~ date ~~((of))~~ the decision is sent will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is ~~((mailed))~~ sent on June 1 for weeks claimed on April 30. On July 1, a decision is ~~((mailed))~~ sent assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was ~~((mailed))~~ sent.

(3) The department will treat any fraud for weeks filed more than fourteen days after the ~~((mailing))~~ date ~~((of))~~ a prior fraud decision is sent as a separate occurrence of fraud. This applies even if the

weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is ((mailed)) sent assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than fourteen days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. In addition to the fifteen percent penalty, the disqualification period is twenty-six weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks and a penalty of fifteen percent beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of fifty-two weeks beginning with the week of July 10 and a penalty of twenty-five percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

AMENDATORY SECTION (Amending WSR 13-24-012, filed 11/21/13, effective 12/22/13)

WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision? (1) The department will ((issue)) send a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (twenty-six week disqualification and a fifteen percent dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is ((mailed)) sent on August 1 and benefits are denied for the following twenty-six weeks and a fifteen percent penalty is assessed. On August 10, another fraud decision is ((mailed)) sent which is considered part of the first occurrence and denies benefits for the twenty-six weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the twenty-six week denial period begins with ((the)) August 10 ((mailing)), the date the second fraud decision is sent.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011. (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, or unemployed due to strike or lockout) ((during the first payable week)) after all wages for the claimant on the current claim have been received. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-220-060 Will I be notified of my right to appeal the overpayment? (1) The department will (~~notify~~) send you and all interested employers (~~in writing~~) information about the overpayment assessment and the right to appeal any of the following elements of the assessment:

- (a) The reason for the overpayment.
 - (b) The amount of the overpayment.
 - (c) The finding of fault or nonfault.
 - (d) The reason waiver of the overpayment was allowed or denied.
- (2) As used in this chapter, an interested employer is:

(a) An employer that provides information to the department which results in an overpayment assessment.

(b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-080 How do I obtain a waiver? (1) When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the (~~10-day~~) response deadline indicated in the notice, which will be no less than five days plus reasonable mailing time, if any. If you do not provide the information (~~within 10 days~~) by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

WAC 192-270-070 Modifying a training plan. (1) You must notify the department by using the department's online services or by mail 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) ((-)) through (g). Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), 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) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), 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 are subject to recovery under RCW 50.20.190.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-100-015 Equity and good conscience defined. (1) For the purposes of chapters 192-230 and 192-330 WAC, "equity and good conscience" means fairness as applied to a given set of circumstances.

(2) When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

(a) General health, including disability, competency, and mental or physical impairment;

(b) Education level, including literacy;

(c) Whether there is current income from work or a business;

(d) History of unemployment;

(e) Future earnings potential;

(f) Business structure, if appropriate;

(g) Marital status and number of dependents, including whether other household members are employed;

(h) The costs of collection compared to the amount of the outstanding debt. The department may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;

(i) Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;

(j) Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days; and

(k) Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor listed in this section, except for the presumption established under (j) of this subsection.

AMENDATORY SECTION (Amending WSR 05-01-076, 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))~~ 12:00 a.m. and ending at ~~((midnight))~~ 11:59 p.m. the following Saturday.

AMENDATORY SECTION (Amending WSR 05-01-076, 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, or, when requested, backdated to a calendar week prior to the calendar week in which the application is filed as provided in WAC 192-110-095. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-100-070 Conditional payments. (1) A conditional payment is:

(a) Payment issued to you after you have already received benefits but during a period in which the department questions your continued eligibility for benefits ~~((-))~~; or

(b) Payment issued when you have provided reasonable evidence of authorization to work in the United States but the department is paying benefits pending verification by the federal government.

(2) Your right to retain such payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

~~((+2))~~ (3) You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.

~~((+3))~~ (4) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160(3).

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-100-075 Domestic partner. For purposes of this title:

(1) "Domestic partner" ((or "state registered domestic partner")) means:

(a) Two adults who ((meet the requirements of RCW 26.60.030 and have been issued a certificate of state registered)) have registered as a domestic partnership ((by)) with the Washington secretary of state; or

(b) A legal union of two persons of the same sex that was formed in and is legal in any state or jurisdiction.

(2) "Domestic partner" does not include partnerships formed by individuals of the opposite sex except as provided by RCW 26.60.030 or the equivalent law of another state.

AMENDATORY SECTION (Amending WSR 13-02-008, filed 12/19/12, effective 1/19/13)

WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program? (1) Any (~~net~~) income you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(a) Net income based on self-employment must be reported as provided in WAC 192-190-105.

(b) Gross income from any other source must be reported as earnings.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2) (~~(e)~~) (b) and 50.29.021 (3) (a).
(1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (~~(2)~~) (3) of this section.

(2) When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced due to a later correction in wages, the department will charge that employer for the benefits that should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except as provided in subsection (3) of this section.

(3) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages 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.

