



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: March 24, 2020

TIME: 9:39 AM

WSR 20-08-034

**Agency:** Employment Security Department

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR 20-03-102

- Preproposal Statement of Inquiry was filed as WSR 19-18-021 ; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
- Proposal is exempt under RCW \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Hours of Availability and Suitable Work: Adjusting the hours unemployment claimants must be available for work in order to be eligible for unemployment benefits and updating factors used to determine suitable work. The public hearing is being rescheduled as a remote hearing due to COVID-19 concerns.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
May 7, 2020	10:00 am	Telephone conference, Call (360) 407-3790	When prompted for the Conference ID number, press 51750 and then the # key

**Date of intended adoption:** May 9, 2020 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Joshua Dye  
 Address: P.O. Box 9046, Olympia, WA 98507-9046  
 Email: [rules@esd.wa.gov](mailto:rules@esd.wa.gov)  
 Fax: 844-652-7096  
 Other:  
 By (date) May 6, 2020

**Assistance for persons with disabilities:**

Contact Teresa Eckstein  
 Phone: 360-507-9890  
 Fax: 360-586-4600  
 TTY: Relay 711  
 Email: [teckstein@es.wa.gov](mailto:teckstein@es.wa.gov)  
 Other:  
 By (date) April 30, 2020

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Under current rules, unemployment claimants must be available for work during all the usual hours and days of the week customary for their occupation. This requirement can be unobtainable for some claimants who work in 24/7 professions, especially those claimants who have family caregiving responsibilities. Rulemaking is necessary to set a more obtainable standard. Additionally, rulemaking is necessary to include shifts of employment as a factor used to determine suitable work, consistent with Unemployment Insurance Program Letter No. 41-98.

**Reasons supporting proposal:** Current availability requirements force many Washington workers to make difficult choices between providing care necessary for family members and being available for work during unattainable days and hours. Approximately forty percent of industries in Washington are classified as having customary hours of twenty-four hours a day, seven days a week. This forces claimants to be available morning, afternoons, and overnight, even if the claimant had not previously worked shifts during those time frames. Many claimants are unable to accept work different from previous work schedules due to obligations for providing care for a child or vulnerable adult, which precludes the claimant from receiving unemployment insurance benefits. By removing the requirement that claimants be available for "all of" the customary hours of the industry, claimants are provided flexibility to receive UI benefits while the claimant searches for new suitable employment while meeting obligations for providing care to family members.

Clarifying the definition of suitable work to include previous shifts of employment provides a level of protection for workers. The amended definition of suitable work removes hardships on claimants while protecting charged employers by preventing claimants from imposing undue restrictions on availability.

**Statutory authority for adoption:** RCW 50.12.010 and RCW 50.12.040 provide general rulemaking authority to the Employment Security Department. RCW 50.12.042 provides specific rulemaking authority regarding the requirement that unemployment claimants be able to work, available for work, and actively seek work. RCW 50.20.100 provides rulemaking authority to determine what factors are used to determine suitable work.

**Statute being implemented:** RCW 20.12.042

**Is rule necessary because of a:**

Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization) Employment Security Department  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Scott Michael	Olympia	360-890-3448
Implementation:	Julie Lord	Olympia	360-890-3635
Enforcement:	Julie Lord	Olympia	360-890-3635

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Joshua Dye

Address: P.O. Box 9046, Olympia, WA 98507-9046

Phone: 360-890-3472

Fax:

TTY:

Email: Rules@esd.wa.gov

Other: <https://esd.wa.gov/newsroom/ui-rule-making/>

No: Please explain:

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

From July 1, 2017 through July 1, 2019, the Department denied 22,105 claims for claimants who were not available during the work hours and days usual for their type of work. Each claim, on average, represents \$7,285 in charged benefits to an employer. When considering the total denied claims spread across the state-wide employer base, the proposed rule would increase each employers' average charged benefits by \$130.48 per year. An increase of this size is unlikely to increase the tax liability for many employers.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Date:** March 24, 2020

**Name:** Dan Zeitlin

**Title:** Employment Security Policy Director

**Signature:**

A handwritten signature in blue ink, appearing to read "Dan Zeitlin", with a horizontal line extending to the right.