



# Unemployment Insurance ADVISORY COMMITTEE



**Employment Security Department**  
WASHINGTON STATE

November 18, 2020

# Discussion Topics



## **New Emergency Rules**

- Backdating Reopened Claims
- Serving Petitions for Judicial Review

## **Potential UI State Legislation**

- Shared Work
- Waiting Week
- Lump Sum Retirement Benefits
- Voluntary Contributions Program
- High Risk Individual Voluntary Quit

## **Modifying Work Search**

- Continue 10/28 Committee Discussion

# New Emergency Rules



## More Flexibility for Backdating Reopens

- With [Governor Proclamation 20-25.8](#) ("Stay Safe-Stay Healthy"), ESD anticipates a surge of people who opened a claim last Spring, returned to work over the Summer, and will now need to reopen their prior claim.
- Current [WAC 192-110-050](#) only permits individuals to backdate a reopened claim for "good cause."
- A change to the rule is needed to allow backdating "for the convenience of the Department," as occurs with initial claims, which permits more flexibility in backdating, for example, due to lack of available staff.

# New Emergency Rules



## Service of Petitions for Judicial Review

- When a party is dissatisfied with an appeal decision issued by the Commissioner's Review Office, they can file a petition for judicial review in Superior Court.
- Petitions for judicial review need to be served on the Department.
- Current [WAC 192-04-210](#) says petitions for judicial review need to be served by mail or **in person**.
- Rule change will allow petitions for judicial review to be served by mail or **by e-mail**.

# Shared Work



## [RCW 50.60.110\(1\)](#)

- Shared Work benefits must be charged to the accounts of taxable and reimbursable employers,

## [Sec. 2108 of the CARES Act](#)

- Shared work benefits are fully federally funded through Dec. 26, 2020,

## [Changes made by Governor Proclamation:](#)

- Shared Work benefits non-charged to both reimbursable and taxable employers because they are fully funded by the federal government.

# Shared Work



## Changes the state must make to maintain federal conformity, per USDOL

### [UIPL 22-12, Change 1 \(Dec. 21, 2012\)](#)

- An employer must have at least two employees enrolled in shared work in order to participate.

### [RCW 50.60.020\(5\)](#)

- Permits employers to participate if they have “at least one employee” in the Shared Work plan.

### [26 U.S.C. § 3306\(v\)\(6\)](#)

- Shared work employees may participate, as appropriate, in training to enhance job skills if such training program has been approved by the state agency

#### State law

- No state statute or rule explicitly permitting training; always allowed in practice and policy

# Waiting Week



- Federal Background

- Sec. 204(a)(2)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 says the federal government will pay for a claimant's first week of extended benefits if the state has an unpaid waiting week.
- Sec. 4105(b) of the Families First Coronavirus Response Act waived the waiting week requirement.
- Sec. 2105 of the CARES Act gave full federal funding for waiting week benefits.

# Waiting Week



- Changes made by Governor proclamation
  - Waived the waiting week
- Changes made by emergency rule
  - Waiting week benefits not charged to the accounts of taxable or reimbursable employers.
- Possible statutory change
  - Waive the waiting week and don't charge waiting week benefits when the federal government is paying for the benefits.

# Lump Sum Retirement Benefits



- Federal background – Retirement Benefits Generally
  - [26 U.S.C. § 3304\(a\)\(15\)](#) requires states to deduct retirement, pension, and “any other similar periodic payment” from a claimant’s weekly benefit.
  - Retirement/pension payments based on plans from non-base year employers are not deducted from benefits.
  - The portion of the retirement/pension payment that is based off employee contributions to the plan are also not deducted from benefits.
- [RCW 50.04.323](#) complies with this statute.

# Lump Sum Retirement Benefits



- Federal background – Lump Sum Payments
  - [UIPL 22-87](#) and [UIPL 22-87 Change 1](#) : a state may, but is not required to, deduct lump sum retirement benefits from a claimant's weekly benefit
- [RCW 50.04.323\(3\)](#)
  - Lump Sum retirement/pension payments must be prorated over the life expectancy of the claim, and then that prorated amount is deducted from weekly benefits.

# Lump Sum Retirement Benefits



- For every lump sum payment, Employment Security must determine the following:
  - How much did a base year employer contribute to the plan?
  - How much did the employee contribute to the plan?
  - What is the life expectancy of the claimant?
- Workload impacts of adjudicating lump sum payments
  - It takes about 1.5 hours of staff time to adjudicate lump sums (separations take about 1 hour of staff time to adjudicate)
  - Currently: 3,359 retirements X 1.5 hours (estimate)=5,038.5 hours of work.

# Lump Sum Retirement Benefits



- Alternative options for managing lump sum payments:
  - Do not deduct lump sum retirement/pension payments from benefits at all.
  - Deduct lump sum payments from the week the payment was received.
  - Deduct lump sum payments from the week after the claimant's last day of work (if that week was claimed).
  - Prorate the lump sum payment across a different time span.

# Voluntary Contributions Program



- **Federal Law:** Per [26 U.S.C. § 3303\(d\)](#), states do not violate experience tax rate principles “if they permit voluntary contributions to be used in the computation of reduced rates” so long as the contributions are made within 120 days of the beginning of the year (April 29/30).
- **Voluntary Contributions Program (VCP):** Authorized in state statute, [RCW 50.29.026](#), the VCP allows employers to spend their own money to offset benefit charges to receive a lower tax rate for the next four years.
- **State limitations:**
  - Employers must pay a 10% surcharge on the benefit charges they want to offset.
  - Employers must have jumped 12 rate classes or more over the previous year.
  - Employers must pay enough money to drop at least 4 rate classes.
  - Money used to offset benefits charges must be paid by February 15.

# Voluntary Contributions Program Example



- **Example:** A business has annual taxable payroll of \$200,000 every year. The business had \$0 in benefit charges before 2020 placing it in Rate Class 1 with a 0% experience tax rate. The business incurs \$15,000 in benefit charges in March – June 2020. For 2021-2024, the business would jump to Rate Class 40 with a 5.40% experience rate tax and \$10,800 in taxes owed annually for 4 years (\$43,200 from 2021-2024). Under the VCP, if the business pays \$15,000 (\$16,500 with surcharge) to offset the benefit charges, it goes back to Rate Class 1 saving \$28,200 (\$26,700 with surcharge) from 2021-2024.

# VCP Potential Amendments



- **Surcharge:** Employers pay a 10% surcharge for benefits they want to buy down. *Potential Amendment:* Eliminate the surcharge to lower the cost to employers.
- **Rate Class:** Only employers that saw an increase of 12 rate classes or more from the previous year can use the program. *Potential Amendment:* Allow employers that saw an increase of 8 rate classes or more to use the program.
- **Buy Down Amount:** Employers must buy down enough benefit charges to reduce their tax rate by at least 4 rate classes. *Potential Amendment:* Require a reduction of at least 2 rate classes so businesses can pay less up front to reduce their rate.
- **Payment Deadline:** Payments are due February 15. *Potential Amendment:* Extend deadline to March 31 as allowed under federal law.

# High Risk Individual Voluntary Quit



- **Voluntary Quit for Quarantine**

- ESD emergency rule considers individuals at high risk or caring for others at high risk without the ability to telework potentially eligible for UI due to “lack of work”
- ESD is pursuing formal rulemaking and will engage stakeholders.
- Potential legislation to consider such circumstances as an allowable voluntary quit.
- ESD will provide cost estimate as part of rulemaking and legislative process.

# Work Search and Job Search Review



- Claimants must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed.
- The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.
- The Employment Security Department shall implement a job search monitoring program.

# Monitoring work search



- RCW requires a job search monitoring program
  - JSR unit is staffed with 4 FTE, who complete ~400 job log reviews per week.
- Eligibility review in terms of work search occurs throughout the system, not just in the Job Search Review unit.
  - Benefit Accuracy Measurement – full review and verification of work searches.
  - RESEA – each encounter includes eligibility review, including work search review.
  - Adjudication, intake, other agency staff all empowered to set issue when job search information is missing, incomplete, or otherwise raises a flag.

# Challenges ESD faces with RCW 50.20.240



- ESD does not have flexibility to adjust work search requirements to accommodate urgent challenges, local conditions, or innovations in reemployment programs.
- If the statute were less prescriptive, the system could innovate to match effective reemployment plans with job seekers' needs, and match requirements with available capacity in the state.

# Potential Bill: Amending RCW 50.20.240



(1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement ~~((a))~~ job search monitoring ~~((program))~~. The department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department ~~((may use interactive voice technology and other electronic means to))~~ must ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) [...] an individual who has received ~~((five or more weeks of))~~ benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week ~~((beyond five))~~ in which a claim is filed. The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week, or as otherwise directed by the department.

(c) In developing the requirements for ~~((the))~~ job search monitoring ~~((program))~~, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) An individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190.