

NEW SECTION

**WAC 192-500-200 Election, withdrawal, and cancellation of coverage for self-employed workers and tribes.**

(1) For any self-employed person as defined in RCW 50A.04.105(1) or federally recognized tribe as defined in RCW 50A.04.110, notice of election of coverage must be submitted to the department online or in another format approved by the department.

(2) Elective coverage begins on the first day of the calendar quarter immediately following the notice of election.

(3) A period of coverage is defined as:

(a) Three calendar years following the first day of elective coverage or any gap in coverage;

(b) Each subsequent calendar year.

(4) Any self-employed person or federally recognized tribe may file a notice of withdrawal within 30 days after the end of each period of coverage.

(5) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(6) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

NEW SECTION

**WAC 192-500-205 Election of coverage for federally-recognized tribes**

(1) Federally recognized tribes electing coverage are employers as defined in RCW 50A.04.010 and are subject to all rights and responsibilities under Title 50A RCW.

(2) Employees of federally recognized tribes that elect coverage are employees as defined in RCW 50A.04.010 and are subject to all the rights and responsibilities under Title 50A RCW.

NEW SECTION

**WAC 192-500-210 Department's determination of wages earned and hours worked for self-employed persons electing coverage.**

(1) The department will use the self-employed person's reported income and divide it by the state's minimum wage to presume the number of hours worked.

Example: For this example, the state's minimum wage is \$12.00 per hour. The self-employed person electing coverage reports \$10,000 of income in a quarter. The department will divide \$10,000 by \$12.00 and presume the self-employed person worked 833 hours in that quarter.

(2) The self-employed person may overcome the presumption of hours by providing sufficient documentation to the department, including, but not limited to, personal logs or contracts.

(3) The department may use copies of tax returns, bank records, or any other documentation deemed necessary by the department to verify or determine the self-employed person's hours and wages.

#### NEW SECTION

##### **WAC 192-500-300 Employer liability for premiums and small business assistance grants.**

(1) The department will only count the number of in-state employees as defined in Title RCW 50A.04.010(4) to calculate the size of the employer for purposes of premium assessment and small business assistance grants.

(2) If the department determines that the employer has changed its status as it relates to premium liability, the department will send a notice to the employer directing the following:

(a) If the employer was determined to have 50 or more employees for the preceding calendar year, and the employer is then determined to have fewer than 50 employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the following calendar year.

(b) If the employer was determined to have fewer than 50 employees for the preceding calendar year, and the employer is then determined to have 50 or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the following calendar year.

#### NEW SECTION

##### **WAC 192-500-305 New employer size assessment**

(1) An employer who has not been in business in Washington long enough to report four calendar quarters by September 30 will have its size calculated on the day that the first full quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination shall remain in effect

until the next annual employer size calculation pursuant to RCW 50A.04.115(8)(c).

NEW SECTION

**WAC 192-500-310 When employer premium payments are due.**

(1) Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid.

(2) Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

(3) Premium payments are due within 10 calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest under RCW 50A.04.140.

NEW SECTION

**WAC 192-500-320 - Localization - Where is work localized?**

(1) An employee's work is localized in Washington and subject to reporting requirements and premiums when:

(a) All of the work is performed entirely within Washington, or;

(b) Most of the services are performed within Washington, but some of the work which is temporary or transitory in nature, or consists of isolated transactions is performed outside of Washington.

(2) Services that are not localized in Washington will be subject to reporting requirements and premiums when:

(a) The services are not localized in any state, but some of the services are performed in Washington, and;

(i) The base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such services is directed or controlled is in Washington, or;

(ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.

Example: A storm hits Washington. An employer in Oregon dispatches an employee who typically lives and works in Oregon

to help with repair work. The employee works temporarily in Washington for the employer for one week, and then returns to work in Oregon for the employer. The employment is localized within Oregon and is not subject to premium assessment.

NEW SECTION

**WAC 192-500-330- Localization - When can an employer request a conditional premium waiver?**

(1) An employer is not required to request a conditional premium waiver for work that is not subject to premiums under WAC 192-500-320 or fails to meet the definition of employment in RCW 50A.04.010(7)(a).

(2) Any conditional premium waiver request must be submitted to the department online or in another format approved by the department.

(3) As a condition to granting the conditional premium waiver, the employer will file quarterly reports to verify that employees still qualify for the conditional premium waiver.

(4) Once an employee works 820 hours in a qualifying period localized in Washington for an employer, the conditional premium waiver expires.

(5) The department may require the employer to submit additional documentation as necessary.

(6) If the employee exceeds the eight hundred twenty hours or more in a qualifying period, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the qualifying period in which the employee exceeded the eight hundred twenty hours had the waiver not been granted. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.

Example: A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week, and is then laid off. The employer could request a conditional premium waiver for this employee.

NEW SECTION

**WAC 192-500-400 Parties to collective bargaining agreements.**

(1) The rights and responsibilities under Title 50A RCW do not apply to parties covered by collective bargaining agreements in effect before October 19, 2017, unless and until the agreements expire, are reopened, or are renegotiated.

(2) For the purposes of this section, the department will use the language of each collective bargaining agreement to determine what constitutes the reopening or renegotiation of the agreement.

(3) An employer must file quarterly reports once a collective bargaining agreement expires, is reopened, or is renegotiated.

(4) In order to be eligible for benefits, an employee must have worked at least 820 hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened, renegotiated, or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within ten calendar days.

(5) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW. Employers are also subject to the rights and responsibilities of Title 50A RCW for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(6) Employers party to multiple collective bargaining agreements among different bargaining units are only subject to the rights and responsibilities of Title 50A RCW as they pertain to the bargaining units whose collective bargaining agreement has expired, been reopened, or renegotiated on or after October 19, 2017.

NEW SECTION

**WAC 192-500-600 Employer voluntary plan application procedures.**

(1) A voluntary plan application must be submitted to the department online or in another format approved by the department. Incomplete applications will not be reviewed. Voluntary plan application fees are due at the time the application is submitted to the department. The fee is non-

refundable. If the voluntary plan is denied, a new application fee is required with each additional application.

(2) An employer in an approved voluntary plan must report the hours and wages for each of its employees to the department.

(3) Voluntary plans can only take effect on January 1:

(a) Voluntary plans applications submitted between January 1 and September 30 will take effect on the following January 1, if approved by the department.

(b) Voluntary plan applications submitted between October 1 and December 31 will take effect on the second January 1 after the application is submitted, if approved by the department. For example: ABC, LLC submits an application for a voluntary plan on October 1, 2019. The earliest ABC, LLC's application can be approved is for calendar year beginning January 1, 2021.

#### NEW SECTION

#### **WAC 192-500-610 Duplicate benefits under state and voluntary plans.**

(1) Any state benefits paid to an employee covered by a voluntary plan may result in an overpayment, and repayment may be required to the state pursuant to RCW 50A.04.065.

(2) If an employee moves from an employer covered by the state plan to an employer covered by a voluntary plan and files a claim for benefits, the employer may request the department to provide the employer with information related to any benefits the employee has received in the preceding 52 weeks. The department will provide the information to the employer within ten calendar days.

(3) If an employee moves from an employer covered by a voluntary plan to an employer covered by the state plan, the department will request information from the previous employer related to any benefits the employee has received in the preceding 52 weeks. The employer will provide the information to the department within ten calendar days.

(4) If an employee moves from an employer covered by a voluntary plan to a different employer covered by a voluntary plan, the new employer may request the previous employer to provide information related to any benefits the employee has received in the preceding 52 weeks. The previous employer will provide the information to the new employer within ten calendar days.

NEW SECTION

**WAC 192-500-620 Substantive requirements for voluntary plans.**

(1) An employer's voluntary plan must:

(a) Allow the employee to take the same duration of leave from work as the state plan; and

(b) Pay at least equivalent total monetary benefits as the state plan.

(2) An employer with an approved voluntary plan may use an accelerated payment schedule wherein the employer pays the same total monetary benefit or more to which the employee would be entitled under the state plan over a reduced length of time.

(a) If the employer chooses to use an accelerated payment schedule, the total monetary benefit must be paid to the employee over a length of time that is no less than one-half of what would be provided under the state plan.

(b) Whether an employer elects to use an accelerated payment schedule has no impact on the length of job-protected leave to which the employee is entitled.

(3) Employees covered by a voluntary plan are entitled to at least the same length of job-protected leave to which they would be entitled under the state plan. An employer and an employee may enter into an agreement wherein the employee returns to work at an earlier date.

Example: An employee elects to take 12 weeks of leave for the birth of a new child. The weekly benefit amount is \$750. The employer elects to pay the employee \$1,500 weekly over six weeks. In addition, the employer and the employee agree that the employee will return to work after six weeks.

Note: In the above example, the employee would still have been permitted to take the full 12 weeks of leave if the employee had elected to do so.

(4) A \$250 fee will be required for every new application or non-statutorily required amendment filed by an employer seeking approval for a voluntary plan.

(5) If an employer elects to have a voluntary plan for either family leave or medical leave, but not both, the employer is responsible for withholding the employee share of the premium for the portion that is covered by the state plan. The department will post the rates for family and medical leave for the following calendar year to its website by November 30 each year and the employer is responsible for paying the premiums due to the state plan in accordance with WAC 192-500-310.

NEW SECTION

**WAC 192-500-630 End of voluntary plans.**

The employer must notify the department at least 30 days before it withdraws from a voluntary plan. Notification of withdrawal shall be submitted online or another format approved by the department.

NEW SECTION

**WAC 192-500-640 Criteria for benefit eligibility under voluntary plans.**

(1) An employee may not be denied benefits by an employer with an approved voluntary plan if the employee:

(a) Was covered by an approved voluntary plan through their previous employer; or

(b) Has been in employment for at least 820 hours during the qualifying period and has worked for that employer for at least 340 hours.

(2) An employer with a voluntary plan may offer coverage under that plan to an employee who has not yet met these requirements.

(3) When an employee files a claim for benefits, an employer will access the employee's weekly benefit amount information online, or in another format approved by the department, and ensure the employee qualifies for at least an equivalent benefit amount from its voluntary plan.

(4) Upon hiring an employee previously covered under a state plan, the employer with an existing voluntary plan must report to the department online, or in another format approved by the department the new employee's status for the voluntary plan after the employee becomes eligible for that plan.

(5) Employees working for an employer with a voluntary plan who have not yet met eligibility requirements for that plan are eligible for benefits under the state plan so long as all other requirements are met.

NEW SECTION

**WAC 192-500-650 Voluntary plan notice requirements under RCW 50A.04.075**

(1) The department will provide a notice meets the requirements of RCW 50A.04.075 to employers with approved voluntary plans if requested.



(2) The employer may create its own notice, but must provide a copy of its voluntary plan notice to the department for approval. The notice must be submitted online or in another format approved by the department and must contain at least the same information as the state notice.

NEW SECTION

**WAC 192-500-660 Remittance of funds to Department upon termination of voluntary plans**

Upon termination of a voluntary plan, the department will calculate the amount owed by the employer and send an invoice. The amount will be due immediately. However, any balance owed will not start collecting interest until 30 days after the date of the invoice.