

NEW CHAPTER

**Chapter 192-900 WAC**

**DEFINITIONS**

NEW SECTION

**WAC 192-900-005 Aggrieved party.** An "aggrieved party" is any interested party who receives an adverse decision from:

- (1) The department for which the department has provided notice of appeal rights;
- (2) The office of administrative hearings; or
- (3) The commissioner's review office.

NEW SECTION

**WAC 192-900-010 Calendar quarter.** "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31.

NEW SECTION

**WAC 192-900-015 Employer.** (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and

(d) A franchisee.

(2) "Employer" does not include the United States of America.

(3) The term employer is used for both employer and employer agent.

(4) This section does not apply to:

(a) Any self-employed person that has not elected coverage under Title 50B RCW;

(b) Any federally recognized tribe; and

(c) Any person performing casual labor as defined in RCW

50A.05.010.

NEW SECTION

**WAC 192-900-020 Employer agent.** (1) An "employer agent" is a designated representative that is authorized to conduct business on behalf of the employer.

(2) In order to represent an employer before the department, the employer or employer agent must submit a signed power of attorney form to the department.

(3) The employer is responsible for all acts taken or failures to act by the employer agent on the employer's behalf.

NEW SECTION

**WAC 192-900-025 Interested parties.** (1) In all determinations, cases, and appeals adjudicated under Title 50B RCW the employment security department is an "interested party."

(2) Other interested parties in determinations, cases, and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) The department may designate an employee or employer as an interested party in other determinations made by the department.

NEW SECTION

**WAC 192-900-030 Self-employed.** (1) A "self-employed" person is:

(a) A sole proprietor;

(b) A joint venturer or a member of a partnership that carries on a trade or business, contributes money, property, labor or skill and shares in the profits or losses of the business;

(c) A member of a limited liability company;

(d) An independent contractor who works as described in RCW 50A.05.010; or

(e) Otherwise in business for oneself as indicated by the facts and circumstances of the situation, including a part-time business.

(2) A corporate officer is an employee and not self-employed.

NEW SECTION

**WAC 192-900-035 Terms meaning deliver.** (1) Unless otherwise specified, the terms "mail," "provide," "file," "submit," and "send" are interchangeable and mean to properly transmit, deliver, or distribute:

(a) By email or other electronic services; or

(b) In another format approved by the department.

(2) This section does not apply to appeals filed under Title 50B RCW.

NEW CHAPTER

**Chapter 192-910 WAC**

**ASSESSING AND COLLECTING PREMIUMS**

NEW SECTION

**192-910-005 What wages are reportable to the department for premium assessment purposes?** (1) Examples of wages

reportable to the department for premium assessment purposes include, but are not limited to:

- (a) Salary or hourly wages;
- (b) Cash value of goods or services given in the place of money;
- (c) Commissions or piecework;
- (d) Bonuses;
- (e) Cash value of gifts or prizes;
- (f) Cash value of meals and lodging when given as compensation;
- (g) Holiday pay;
- (h) Paid time off, including vacation leave and sick leave, as well as associated cash outs, unless these wages are considered supplemental benefit payments provided by the employer;
- (i) Separation pay including, but not limited to, severance pay, termination pay, and wages in lieu of notice;

(j) Value of stocks at the time of transfer to the employee if given as part of a compensation package;

(k) Compensation for use of specialty equipment, performance of special duties, or working particular shifts; and

(l) Stipends/per diems unless provided to cover a past or future cost incurred by the employee as a result of the performance of the employee's expected job functions.

(2) Examples of what the department will not consider wages include, but are not limited to:

(a) A payment from an employer benefit that is not part of the employee's standard compensation.

Example: While on paid medical leave, an employee receives sixty-one percent of the employee's typical weekly wage from the state. Through an internal short-term disability benefit, the employer pays the employee the remaining thirty-nine percent of the employee's typical weekly wage as a supplemental benefit payment, bringing the employee's total benefit to one hundred percent of the employee's typical weekly wage. Since this supplemental benefit payment is not part of the employee's

standard compensation, it is not considered a wage, and should not be reported on the employer's quarterly report.

(b) Any payment made to an employee to cover a past or future cost incurred by the employee related to the performance of the employee's expected job functions. Such costs include, but are not limited to, costs of meals and travel.

Example: An employer pays a per diem to an employee on a business trip to cover the cost of local travel and meals. This amount is not considered a wage, even if the per diem exceeds the actual cost incurred.

(c) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) to, or on behalf of, an individual or the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for the employer (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

(i) Retirement;



- (ii) Short-term or long-term disability;
- (iii) Medical or hospitalization expenses in connection with sickness or accident disability; or
- (iv) Death.

NEW SECTION

**WAC 192-910-010 When are employers required to submit quarterly reports to the department?** Quarterly reports must be submitted by the last day of the month following the end of the calendar quarter being reported. If a reporting date falls on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day.

NEW SECTION

**WAC 192-910-015 When are employer premium payments 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 ten calendar days when a business is dissolved or the account is closed by the department.

NEW SECTION

**192-910-020 When can an employer deduct premiums from employees?** (1) Employers must deduct premiums for each pay period in which the employee receives wages.

(2) When an employer is found by the department to be non-compliant with collecting premiums from an employee:

(a) Past due premiums may be deducted from the employee's paycheck or the employer may choose to pay the past due premiums for the employee; and

(b) The employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if an employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period.

NEW SECTION

**192-910-025 How are payments applied to long-term services and supports premiums?** (1) A payment received with a premium

assessment will be applied to the quarter for which the premium assessment applies. A payment exceeding the premiums due for that quarter will be applied to any other debt as provided in subsection (4) of this section.

(2) If no debt exists, premium overpayments of less than fifty dollars will be credited to future payments due.

(3) If no debt exists, premium overpayments of fifty dollars or more may be refunded to the employer at the employer's request. Otherwise, such overpayments will be credited to future payments due.

(4) Payments received will be applied in the following order of priority:

(a) Current quarter balance;

(b) Any previous quarter premium balance due starting with the oldest quarter;

(c) Then beginning with the oldest quarter in which a balance is owed.

NEW CHAPTER

**Chapter 192-915 WAC**

**SELF-EMPLOYED PERSONS**

NEW SECTION

**192-915-005 Election of coverage for self-employed**

**persons.** (1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

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

(4) The department may cancel elective coverage if the self-employed person fails to make required payments or file reports.

NEW SECTION

**192-915-010 What are reportable wages for self-employed persons electing coverage?** Each quarter, a self-employed individual who has elected coverage under Title 50B RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50B.04.010, paid to the self-employed individual from the self-employed individual's business entity.

Example 1: A sole-proprietor selling crafts online earns \$3,000 in a quarter and incurred \$2,000 in business-related expenses. The individual would report \$1,000 to the department for that quarter.

Example 2: A member of a limited liability company pays herself a salary in the amount of \$10,000 in a quarter. She also

takes a draw from her company in the amount of \$5,000. She would report \$15,000 to the department for that quarter.

NEW SECTION

**192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?**

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

(2) The self-employed person may overcome the presumption of hours in subsection (1) of this section by providing sufficient documentation to the department including, but not limited to, personal logs or contracts.

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

(3) The department may require 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 CHAPTER

**Chapter 192-920 WAC**

**COLLECTIVE BARGAINING AGREEMENTS**

NEW SECTION

**WAC 192-920-005 Parties to collective bargaining agreements.** (1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50B RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

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

(4) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50A RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(5) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50B RCW and related rules prior to the expiration, reopening or renegotiation of the agreement. Parties seeking to do so must



submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

NEW CHAPTER

**Chapter 192-925 WAC**

**APPEALS AND PROCEDURE**

NEW SECTION

**WAC 192-925-005 Adoption of model rules.** The model rules of procedure contained in chapter 10-08 WAC, are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure for Title 50B RCW. The rules contained in this will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting provisions of the model rules of procedure.

NEW SECTION

**WAC 192-925-010 Who can appeal or submit a petition for review?** (1) An aggrieved party as defined in WAC 192-900-005 may file an appeal to the department by using the department's

online services, or in another format approved by the department.

(2) Any aggrieved party who receives a decision from the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, or in another format approved by the department.

NEW SECTION

**WAC 192-925-015 What are the timeliness requirements for submitting an appeal or a petition for review?** (1) Under RCW 50B.04.120, determinations made by the department must align with the appeal procedures under Title 50A RCW.

(2) An appeal or a petition for review from a determination, redetermination, order and notice of assessment of premiums, appeals decision, or commissioner's decision is deemed filed and received if the provisions within RCW 50A.50.040 are met.

(3) An appeal must be filed within thirty days of the date the notification or mailing, whichever is earlier. The appeal must be filed in accordance with the provisions of RCW 50A.50.010.

NEW SECTION

**WAC 192-925-020 When can an appeal be withdrawn?** (1) An aggrieved party may withdraw their appeal or petition for review upon approval by the office of administrative hearings or the commissioner's review office, respectively, at any time prior to the decision. When an appeal or petition for review is withdrawn, the determination, redetermination, order and notice of assessment of premiums or penalties, or other decision that was appealed, is final in accordance with the provisions of Title 50B RCW.

(2) If an appeal is submitted and a determination or redetermination of the decision has been made in the aggrieved party's favor, the appeal will be considered withdrawn unless the aggrieved party contests the withdrawal of the appeal within thirty days of the date of redetermination.

NEW SECTION

**WAC 192-925-025 What happens after an appeal is submitted?**

Upon receipt of a notice of appeal, the commissioner shall request the assignment of an administrative law judge under chapter 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW and issue an initial order.

NEW SECTION

**WAC 192-925-030 Who will be notified if an appeal is filed and what will it include?** (1) All interested parties to an

appeal will be notified when an appeal has been filed.

(2) The notice will contain information related to the determination or redetermination being appealed.

NEW SECTION

**WAC 192-925-035 Who can give testimony and examine witnesses during an appeal hearing?** In an appeal hearing, any interested party, or legally authorized representative of an interested party, has the right to give testimony and to examine

and cross-examine any other interested party or witnesses with respect to facts material and relevant to the issues involved.

NEW SECTION

**WAC 192-925-040 Who can request a postponement of a hearing?** (1) Any party to a hearing may request a postponement of a hearing at any time prior to the actual convening of the hearing. The granting or denial of the request will be at the discretion of the presiding administrative law judge.

(2) The presiding administrative law judge may in the exercise of sound discretion grant a continuance of a hearing at any time at the request of any interested party or on the judge's own motion.

NEW SECTION

**WAC 192-925-045 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.** The following general procedural rules for appeal under the paid family and medical leave program apply to the long-term services and supports trust program:

(1) WAC 192-800-080 Will depositions and written discovery be permitted?

(2) WAC 192-800-085 When will administrative law judges hear consolidated cases?

(3) WAC 192-800-090 What is included in decisions issued by the office of administrative hearings?

(4) WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review?

(5) WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?

(6) WAC 192-800-105 When and how can an administrative law judge dispose of an appeal?

(7) WAC 192-800-110 What options are available for an aggrieved party who received an order of default?

(8) WAC 192-800-115 What is the process for filing a petition for reconsideration to the commissioner's review office?

(9) WAC 192-800-120 When would the commissioner not issue declaratory orders?

(10) WAC 192-800-125 When is a petition for review considered delivered to the department?

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