



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 11, 2021

TIME: 9:00 AM

WSR 21-05-034

Agency: Employment Security Department

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: This rulemaking is proposed to address the charging of unemployment benefits under RCW 50.29.021(2)(j) for non-Washington combined-wage claims. RCW 50.29.021(2)(j) relieves all employers of benefit charges for benefits paid during all weeks starting with the week ending March 28, 2020 and ending with the week ending May 30, 2020. However, for combined-wage claims filed in states other than Washington, where Washington is the transferring state, Washington is only given notice of benefits charges by the other states on a quarterly basis, not a weekly basis. Therefore, rulemaking is required to address the Employment Security Department's inability to calculate benefit charges on a weekly basis for this specific type of unemployment claim. Therefore, for purposes of RCW 50.29.021(2)(j), and for the purposes of this specific type of unemployment claim, Employment Security will not charge the employer for benefits paid during the second quarter of the combined-wage claim, and all other benefits paid under the combined-wage claim will be charged to the employer, unless the employer qualifies for relief of charges under a different law.

Citation of rules affected by this order:

New: WAC 192-320-072
Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 50.12.040

Other authority: RCW 50.12.050; 20 C.F.R. Part 616.

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: On February 8, 2021, Governor Inslee signed ESSB 5061, which requires Employment Security to make numerous changes to how it calculates the 2021 tax rates of Washington employers. The changes and recalculations must be completed in less than one month so that employers may take advantage of the updated voluntary contribution program under RCW 50.29.026, for which applications and payments are due by March 30, 2021, and so that employers can adequately prepare to accurately pay their unemployment taxes for the first quarter of 2021, which are due by April 30, 2021.

Section 16 of ESSB 5061 amends RCW 50.29.021 by adding new subsection (2)(j), which relieves all employers of benefit charges for benefits paid during all weeks starting with the week ending March 28, 2020 and ending with the week ending May 30, 2020. However, for purposes of combined-wage claims filed in other states, Employment Security does not have access to benefit charges broken down on a weekly basis. A combined-wage claim is where an unemployment claimant combines wages they earned in two or more different states into one unemployment claim filed in one state. If the combined-wage claim is filed in Washington, Washington is known as the paying state, as Washington is the state actually paying the benefits. If the combined-wage claim is filed in another state, and the combined-wage claim uses wages earned working in Washington for a Washington employer, then Washington is known as the transferring state. When Washington is the transferring state, Employment Security receives notices from the other state regarding how much money in unemployment benefits was paid by the other state, and then Employment Security charges the Washington employers proportionately for the benefits paid by the other state. Pursuant to 20 C.F.R. § 616.8(f), the other state is only required to notify Employment Security about the benefits it paid on a quarterly basis.

Employment Security must balance the need to timely calculate the 2021 tax rates for Washington employers, against the command to relieve Washington employers of benefit charges for all weeks starting with the week ending March 28, 2020 through the week ending May 30, 2020, against the reality that Employment Security only has quarterly benefit charging information for combined-wage claims filed in other states. Therefore, Employment Security will relieve benefit charges for the second quarter of 2020 on combined-wage claims filed in other states where Washington is the transferring state, since of the 10 weeks of benefit charge relief mandated by RCW 50.29.021(2)(j), 9 of those weeks are in the second quarter of 2020. While Employment Security could request that other states provide the benefit charge information on a weekly basis, such other states are not required to fulfill that request. Further, making such a request would delay tax rate calculations for Washington employers. Employment Security also considered dividing the quarterly benefit charges on a pro-rata basis, but doing so would require extensive technological changes, which would also delay tax rate calculations for Washington employers.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>1</u>	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	___	Repealed	___
-----	----------	---------	-----	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	___	Repealed	___
-----	----------	---------	-----	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: February 11, 2021

Name: Dan Zeitlin

Title: Employment Security Policy Director

Signature:

