

WSR 21-08-064

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 5, 2021, 2:41 p.m., effective April 5, 2021, 2:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rules are adopted to define how the employment security department will verify that a claimant or an individual living with them has an underlying health condition that is identified as a risk factor of a disease that is the subject of a public health emergency when a claimant applies for unemployment insurance benefits.

Citation of Rules Affected by this Order: New WAC 192-150-155 and 192-170-015.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040; ESSB 5061, sections 8 and 10, chapter 2, Laws of 2021.

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.

Reasons for this Finding: ESSB 5061 (2021) provides, among other things, good cause to leave work when during a public health emergency, the claimant was unable to perform their work for the employer from the claimant's home; the claimant is able and available to perform, and can actively seek, suitable work which can be performed for an employer from the claimant's home; and the claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor of a disease that is the subject of a public health emergency. ESSB 5061, section 10, chapter 2, Laws of 2021. ESSB 5061 (2021) also provides that during the weeks of a public health emergency, an unemployed individual may meet the availability requirements of RCW 50.20.010 (1)(c) if they are able and available to perform, and actively seeking, suitable work which can be performed for an employer from the individual's home; and if the unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency. Section 8, chapter 2, Laws of 2021. The emergency rules clarify how the Department will verify underlying health conditions for purposes of RCW 50.20.010 (43)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II).

ESSB 5061 went into effect on February 8, 2021. In addition, the new good cause reason to quit applies to job separations that occur on or after April 4, 2021. The immediate adoption of rules is necessary so that the department can verify whether claimants are eligible for unemployment benefits under the new laws.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0;

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0;

Date Adopted: April 5, 2021.

Dan Zeitlin
Policy Director

OTS-2974.1

NEW SECTION

WAC 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2) (b) (xii) (C) (II). (1) (a) An individual who asserts they have good cause to voluntarily quit employment because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency will need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department will deny benefits under WAC 192-140-105 if the individual fails to provide the certification.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

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OTS-2980.1

NEW SECTION

WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (3) (b) (ii). (1) (a) An individual who limits their availability for work because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency may need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department may require the individual to provide additional documentation or certification to substantiate the underlying health condition if:

(i) Circumstances of the underlying health condition change;

(ii) Information is provided to the department that the employee may no longer have an underlying health condition; or

(iii) Other circumstances cause the department to question the existence or continued existence of the individual's underlying health condition.

(d) The department will deny benefits under WAC 192-140-070 if the individual fails to provide the certification when requested.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

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