

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-150-130 Worksite safety--RCW ((50.22.050)) 50.20.050 (2) (b) (viii). (1) At the time of hire, you can reasonably expect that your worksite complies with applicable federal and state health and safety regulations. If, after beginning work or accepting the job offer, you become aware of a safety issue that was not previously disclosed by your employer, the department will consider the safety of the worksite to have deteriorated.

(2) To establish good cause for quitting work under this section, you must notify your employer of the safety issue and give your employer a reasonable period of time to correct the situation. For purposes of this section:

(a) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the safety condition at issue;

(b) "Reasonable period of time" means the amount of time a reasonably prudent person would have remained at the worksite or continued working in the presence of the condition at issue. In addition:

(i) For health or safety issues that present imminent danger of serious bodily injury or death to any person, your employer must take immediate steps to correct the situation;

(ii) If your employer has been issued a citation by a regulatory agency charged with monitoring health or safety conditions, the employer must correct the condition within the time period specified in the citation.

(c) "Serious bodily injury" means bodily injury which creates a probability of death, or which causes serious permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ whether permanent or temporary.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-180-005 Registration for work--RCW 50.20.010(1) and 50.20.230. (1) **Am I required to register for work?** You must register for work unless you are:

- (a) Attached to an employer, meaning you are:
 - (i) Partially unemployed as defined in WAC 192-180-013(1);
 - (ii) On standby as defined by WAC 192-110-015;
 - (iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090(~~(+2)~~); or
 - (iv) Participating in the shared work program under chapter 50.60 RCW;
- (b) A member of a union that participates in the referral union program (see WAC 192-210-110);
- (c) Participating in a training program approved by the commissioner; or
- (d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents.

(2) **How soon do I have to register?**

(a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.

(b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.

(3) **Where do I register for work?** You will be registered for work with your local WorkSource office. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

(4) **What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

AMENDATORY SECTION (Amending WSR 07-23-130, filed 11/21/07, effective 1/1/08)

WAC 192-300-230 What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers?

(1) A professional employer organization may collect and make payments on behalf of a client employer, but the client employer remains liable for the payments of any taxes, interest, or penalties due.

(2) Unless the professional employer organization has already notified the department that it has not received payments from the client employer, the department shall first attempt to collect any payments due from the professional employer organization and shall not attempt to collect from the client employer until at least ten days from the date payment was due. Collection procedures shall follow the requirements of chapter 50.24 RCW.

(3) A professional employer organization may elect to provide a bond to cover payments due. Any bond for this purpose shall be filed with the department, shall be in a form satisfactory to the commissioner, and shall be in an amount not less than the amount of contributions due in the highest quarter of the preceding calendar year. A bond does not relieve the professional employer organization or its client employers of ultimate liability for payments due.

(4) In case of error by a professional employer organization in which reports are incomplete, inaccurate, or late, or if the professional employer organization makes a single payment that does not match the amount due for multiple employers, the department will initially apply any penalty and interest charges for all amounts due against the professional employer organization, regardless of whether the professional employer organization has employees in Washington. However, the client employer ultimately remains liable for any taxes, penalties, or interest due.

All client employers of a professional employer organization may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC 192-320-035 or 192-320-036 cannot be assigned to a specific client employer.

(5) If a professional employer organization reports employees of a client employer as its own employees, a first violation will be considered an incorrect report for the professional employer organization and an untimely report for the client employer under RCW 50.12.220(2). A second violation will be considered knowing misrepresentation under RCW 50.12.220(3). A third violation will be considered grounds for revocation of the authority of a professional employer organization to act on behalf of its client employers.

(6) The department may revoke the authority of a professional

employer organization to act on behalf of its client employers if the professional employer organization substantially fails to comply with the provisions of RCW 50.12.300. An order to revoke the authority of a professional employer organization shall be considered an appealable order under chapter 34.05 RCW comparable to an order and notice of assessment under RCW 50.32.030.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-090 **When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.)** "Casual labor" that is not in the course of the employer's trade or business and does not promote or advance the employer's trade or business is not considered employment. This exemption only applies to services such as yard work or minor repair work which is performed for a private individual on nonbusiness property. Any employment which is treated as a business expense does not qualify for this exemption.

"Domestic service" is considered a separate exemption under RCW (~~(50.05.160)~~) 50.04.160.

AMENDATORY SECTION (Amending WSR 12-23-087, filed 11/20/12, effective 12/21/12)

WAC 192-350-010 What is a predecessor-successor relationship?

(1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets including, but not limited to, the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. A predecessor-successor relationship also exists when an employer transfers its business to another employer, and both employers are at the time of transfer under substantially common ownership, management or control. Whether or not a predecessor-successor relationship (including a "partial predecessor" or "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor," including a "full predecessor" or "partial predecessor," if, during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

(b) A separate unit or branch of its trade or business.

(4) **Successor.** A "successor" may be either a "full successor" or a "partial successor." An employer may be a "full successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

(b) A separate unit or branch of a predecessor employer's trade or business.

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (~~(12)~~) (13) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Common ownership, management and control.** Common ownership, common management and common control must be established when the transfer of a business occurs. In determining whether common ownership, management and control exist, the department may consider:

- (a) Ownership—legal owner for tax and liability purposes;
- (b) Familial relationships;
- (c) Principals;
- (d) Organized structure;
- (e) Day-to-day operations;
- (f) Assets and liabilities;
- (g) Stated business purposes; and
- (h) Other information pertinent to the inquiry.

The employer must meet all three elements, common ownership, common management and common control, for the exemption to apply.

(9) **Substantially common ownership, management or control.** In determining whether substantially common ownership, management or control exists, the department may consider the extent of commonality and similarity between employers based on:

- (a) Ownership—legal owner for tax and liability purposes;
- (b) Familial relationships;
- (c) Principals;
- (d) Corporate officers;
- (e) Organized structure;
- (f) Day-to-day operations;
- (g) Assets and liabilities;
- (h) Stated business purposes; and
- (i) Other information pertinent to the inquiry.

This standard is met when **any** common ownership, management or control exists between the employers.

(10) **Substantially similar businesses.** Substantially similar business are businesses:

- (a) In which the products sold or services provided exhibit a high degree of likeness but may be less than identical; and
- (b) Which could reasonably be in competition with one another to provide a substantially similar service or a substantially similar product.

(11) A significant purpose of the transfer of business must be more than an incidental purpose, but may be one of many purposes. Evidence of a significant purpose of the transfer of a business may be shown by:

- (a) Business records, such as corporate minutes or other documents;
- (b) Statements by owners or officers of the business, or by an outside party, such as an accounting firm or tax advisor, made contemporaneous with the transfer; or
- (c) Other credible evidence of the employer's intent.

Employers must provide the department evidence of the purpose of the transfer no later than thirty days after the date of transfer.

(12) **Factors.** Factors should be weighed instead of merely adding up the number of individual factors. No single factor is necessarily conclusive. Some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "full successor" or "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

(13) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating):

(i) When any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by the predecessor, successor, or a combination of both; or

(ii) When a significant purpose of the transfer of a business or its operating assets is for the employer to move or expand an

existing business, or for an employer to establish a substantially similar business under common ownership, management and control.

(14) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-140-095

What happens if I do not respond to a request for details about my separation from work?