

**Expansion of Washington state unemployment eligibility criteria (retroactive to March 23, 2020)
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The State of Washington adopted an emergency rule on April 8, 2020 that broadens eligibility for unemployment benefits. The emergency rule now provides benefits to workers who are unemployed because they stay home due to being in a high-risk category for COVID-19. It is likely that the phrase “prohibited ... to” in the Emergency Rule will be interpreted to mean “required ... to.”

These new eligibility requirements are broader than the federal unemployment criteria under the FFCRA, so individuals who fit under subpart (2) of the Emergency Rule may not be eligible for the extra federal unemployment benefits* but they would be eligible for the regular state unemployment benefits. Here is a link to ESD’s most recent guidance, but it may not be current (check back periodically for updates): <https://esd.wa.gov/newsroom/rulemaking/covid-19>. Please keep in mind that the rules and interpretation are subject to change at any time, and that the forms employers and employees receive from ESD when someone applies for unemployment may not be current.

WAC 192-150-101 Job separations related to COVID-19. For individuals who became unemployed on or after March 23, 2020, the individual will be considered to have been laid off due to a lack of work when:

1.
 - a. The individual was prohibited by a government official to remain at home or place of residence as a result of COVID-19; and
 - b. The individual does not have the ability to telework with pay; or
2.
 - a. The individual was not prohibited by a government official to remain at home or place of residence as a result of COVID-19; and
 - b. The individual is either:
 - i. A person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19;
 - ii. In the same household as a person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19;
 - iii. Providing direct care to a person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19; or
 - iv. Working at a worksite outside of the individual's home or place of residence that does not follow rules or guidelines published by the United States Department of Labor, the Washington department of labor and industries, or the Washington department of health for protecting workers from COVID-19 exposure; and
 - c. The individual does not have the ability to telework with pay.

*To be eligible for the additional federal unemployment benefits, someone at high risk would have to meet the following criteria:

(a) In General.--An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

This posting is for general information only and is not legal advice. For additional information, contact ksutherland@omwlaw.com, bvanmoppes@omwlaw.com, or ybrown@omwlaw.com in our Seattle office or emccool@omwlaw.com or gsparks@omwlaw.com in our Wenatchee office.