



Concise Explanatory Statement Cross-Program Payment Allocation

Introduction

Pursuant to RCW 34.05.325(6), the Employment Security Department (Department) hereby provides the Department’s reasons for adopting the rules, a description of the variances between the proposed rules and the final rules, and a summary of comments received¹ regarding the proposed rules and responses to the comments

Reasons for adopting the rule

The Employment Security Department currently runs three programs: State Unemployment Insurance, WA Cares, and Paid Family and Medical Leave. As part of its duties, the Department receives payments from employers for each program. Occasionally, an employer sends a payment to the Department without indicating which program(s) the payment was intended for, and the Department is unable to make contact with the employer to determine the employer’s intent. There are currently no rules addressing how employer payments are allocated across these programs in these situations. Therefore, this rulemaking is necessary to set out the process for the Department to allocate payments across these programs.

Variance between proposed rule and final rule

There is no variance between the proposed and the final rule. The Department has considered the public comments and determined that no changes should be made to the rule language as set forth below.

Summary of comments to proposed rules and agency response

Public Comment	Agency Response
<p>Keri Clark, Northwest Regional Council</p> <p>My question is if this rule becomes law, if that’s how it goes, does that open up Pandora’s box of sharing funds between Employment Security, WA Cares, and Paid Family Medical Leave? My concern is that one may be underfunded due to COVID, and this opens up the opportunity to share funds between the three, and that’s a concern of mine.</p> <p>The question is based upon the tax returns filed, is it impossible for allocate the funds to where they should be? If I file a tax return and it says that I owe X amount of dollars, how is it that you cannot apply those dollars to where they are owed? So my question is: Are you doing your due diligence to</p>	<p>The proposed rule would only be applied in situations where the program for which the payment is intended is not clear. To determine what program the payment should be applied to, the Department will look at what address the payment was sent to, whether a wage report was included with the payment, whether the payment listed the intended program, and any other information that was included with the payment.</p> <p>After a detailed review, if it is still unclear what program the payment was intended for, the Department will make a reasonable attempt to contact the employer to determine how the payment should be applied. If the Department is</p>

¹ Several members of the public appeared at the rulemaking hearing but did not have public comment to offer. Among those who appeared were several individuals with questions or concerns about their unemployment insurance claims. They were provided with contact information for the Department’s Customer Inquiries team.

match up tax returns with account numbers with employers and their payment?

But you receive tax returns and you can send out notices about payments due, so if that employer has filed a tax return, how do you not know where to allocate the funds?

I'm a career-long bookkeeper, and I have found that all Washington – most all Washington State businesses owe to WA Cares, Paid and Family Medical Leave and Unemployment or Unemployment Security Department for their unemployment insurance. So that majority of businesses in Washington State do have multiple accounts. My question is: Are you, say again with the example of the \$52 owed for – what did we say – employment insurance. Now let's add on that I owe \$150 to WA Cares and I owe \$200 to Paid Family Medical Leave. What is the due diligence in the process to look at each of those balance owed and figure it out for yourselves that the \$52 equals the amount of Unemployment Insurance and my \$150 payment without any notation on the check clearly goes to WA Cares, and my \$200 payment without any notification clearly goes to Paid Family Medical Leave based on the balances due on the tax return?

So my concern is that you're willing to put funds into this, that, or the other without checking the work that's been done by the employer by filing a tax return, and you're relying on using the phone or email to reach the employer to get your answers when I feel that's unfair because for many, many years Employment Security Department has been very difficult to get ahold of on the phone. So I'm sure you can understand my question here that we rely on multiple methods to get our jobs done, and I believe that our tax returns provide the answers to your questions.

unable to contact the employer or the employer is not responsive, the Department will rely on the rule to determine how to allocate the payment.

Therefore, the proposed rule would only apply to limited situations in which the Department conducted steps to identify the intent of the employer but was unable to do so and only after the Department made a reasonable attempt to contact the employer but was unsuccessful.

Lindsey Minaker

I got an email asking for a comment on this subject. I have experience trying to get help with PFML once two years ago because I got gastric bypass and also recently because I got sick with covid. That program is horribly hard to navigate and doesn't

In determining how to allocate payments across programs, the Department considered splitting payments equally across all programs to which and employer owes. However, this could lead to only partial payments being made to those programs, which could then lead to the employer accumulating penalties and/or interest across more than one program. The Department determined

<p>seem to be very accessible when it is needed. That said; if a payment is sent unaddressed to a program, the easiest solution would be to split it equally to all the programs.</p>	<p>that it would be more equitable to distribute payments program-by-program so that an employer's entire debt to a program may be paid to avoid penalties and interest.</p>
<p>Kelly Ferry</p> <p>My recommendation is to simplify the entire reporting and payment process. It should be a fairly simple matter for ESD to combine all three into a single report, for a single amount due, and a single payment that will be distributed to the different funds internally. The current report process is ridiculous from the employer's perspective. We need a way to verify our entries and see the total amount due immediately for all the different programs. We shouldn't have to hope it all went well and log in a day or two later to see how much is due and hope it matches our expectations.</p>	<p>The Department's programs have different funding requirements that require separate reports. The Unemployment Insurance program receives federal funding that has certain requirements. One of those requirements is that Unemployment Trust Fund payments must be used only to pay unemployment insurance to claimants. Therefore, the Department must track Trust Fund money separately from its other programs and cannot combine funds or reports from its various programs.</p>
<p>Stephanie Saltzgeber</p> <p>I suggest, if you are unable to determine where the funds should be allocated, you send the funds back to the employer. There is no reason for you to keep funds if you are unable to apply them correctly.</p>	<p>In drafting the rule language, the Department considered the option of sending money back to the employer. However, this could lead to penalties and interest accumulating in the employer's account(s) if the payment is not applied to the employer's account(s). Therefore, the Department determined that it is more equitable to deposit the payment into the account(s) where the employer owes money when a check is received.</p>
<p>Sylvia Mikel</p> <p>I completely agree with what ESD is working on. I believe that we should know not only as employees but the people that represent us should be able to know where our funds taken out of our check are going too.</p>	<p>The Department acknowledges the comment and notes that it intends for the rule to provide clarity on how it allocates payments in the specific situations the rule addresses.</p>
<p>Arajean Johnston, Primary Electric Accounting</p> <p>It seems that somehow all three of these programs could be integrated into one reporting format making it less time consuming for the public in reporting them. Since sick leave and care programs can't even be reported till after the quarter ends, but some of our payrolls are done before the ends, we have to come back to file those reports.</p>	<p>The Department's programs have different funding requirements that require separate reports. The Unemployment Insurance program receives federal funding that has certain requirements. One of those requirements is that Unemployment Trust Fund payments must be used only to pay unemployment insurance to claimants. Therefore, the Department must track Trust Fund money separately from its other programs and cannot combine funds or reports from its various programs.</p>

<p>Literally the only thing that is different from employment security form is their birthdate and care exempt column which are required now on the cares form.</p>	
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