NEW SECTION. WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status? [eff. 1/1/08]

If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed as defined in RCW 50.04.310 and benefits will be denied under RCW 50.20.010. This denial is for an indefinite period of time and will continue until you show you are unemployed as defined under RCW 50.04.310.

WAC 192-300-170 Requirements for election of unemployment insurance coverage. [eff. 1/1/09] The department ((has to make timely and accurate employer liability determinations and unemployment insurance payments. It is under)) applies RCW 50.04.165 and 50.24.160 ((that we)) to establish the election of coverage for unemployment insurance by employers where personal services are not considered employment under the law:

(1) RCW 50.24.160 allows any business to ((file a)) request ((for election of)) unemployment insurance coverage for personal services that are not covered as employment:
   (a) The request must be in writing to the department;
   (b) The department must approve the request for election of coverage in writing; and
   (c) The request must be signed by someone legally authorized to bind the business.

(2) ((RCW 50.04.165 allows a corporate employer to elect to cover the personal services of its corporate officers for unemployment insurance coverage:
   (a) A corporate employer must submit a written request for voluntary coverage signed by a person authorized to legally bind the corporation. The department must receive this request no later than thirty days prior to the end of the quarter in which the change is to begin;
   (b) "Corporate officer" is defined in RCW 23A.08.470;
   (c) Corporate officers appointed under RCW 23B.08.400, other than those covered by Chapter 50.44, are not considered services in employment unless the corporation elects coverage of all its corporate officers under RCW 50.04.165;
   (d) All services of corporate officers are considered exempt until the effective date of approval of election of coverage by the department; and
   (e) Corporate officers are exempt under RCW 50.04.165 only if the employer has notified them in writing that they are ineligible for unemployment insurance benefits. The exemption becomes effective with the date of the written notice. The written notice must:
   (i) Have the name(s) of the officer(s) who is/are being exempted;)}
(ii) Have the effective date of the exemption;
(iii) Have a signature of the officer(s) acknowledging receipt of the request;
(iv) Be kept on file by the corporation; and
(v) Be available for review by any department official upon request.
(3) If an agricultural corporate employer voluntarily covers its officers, the wages or salaries paid for such services will be used to determine the employer liability of the agricultural employer. Wages or salaries paid for service of corporate officers exempt under RCW 50.04.165 will not be used to determine liability of agricultural employers.
((4))) All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. ((A written request by the employer must be sent to the department by January 15th following the end of the last calendar year of desired coverage.)) To terminate coverage, the employer must send a written request to the department by January 15.
((5))) The department reserves the right to disapprove ((an election for unemployment insurance)) a request for coverage ((due to)) because:
(a) The applicant ((being nonliable)) is not liable for federal unemployment taxes (FUTA); ((or))
(b) The ((seasonal nature of the)) occupation or industry is seasonal; or
(c) Other reasons apply.
(6) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:
(a) Of nonpayment of unemployment insurance taxes((, and/or)) or failure to file an unemployment insurance ((tax/wage)) tax and wage report; ((or))
(b) Of misrepresentation of facts; ((or))
(c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010; or
(d) Other reasons apply.

NEW SECTION. WAC 192-310-150  Are corporate officers covered for unemployment insurance?  [eff. 1/1/09]

(1) For purposes of WAC 192-310-150 through 192-310-190:
(a) “Corporate officer” means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.400;
(b) “Public company” means a corporation that has a class of shares registered with the federal securities and exchange commission as defined in RCW 23B.01.400;
(c) “Non-public company” means a corporation that does not meet the definition of a public company;
(d) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;
(e) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if
measured for ancestors, it would include a person and that person’s parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(f) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state.

(g) “Exercise substantial control in the daily management of the corporation” means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

NEW SECTION. WAC 192-310-160  How may corporations exempt corporate officers from unemployment insurance coverage?  [eff. 1/1/09]

(1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:
   (a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;
   (b) Who is a shareholder of the corporation;
   (c) Who exercises substantial control in the daily management of the corporation; and
   (d) Whose primary responsibilities do not include the performance of manual labor.
(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4). This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

NEW SECTION. WAC 192-310-170 How is unemployment insurance coverage of corporate officers reinstated?

(1) Unemployment insurance coverage of corporate officers who have been exempted from coverage may be reinstated under subsection (2) of this section by termination of an exemption or under subsection (3) of this section by election of the corporation.

(2)(a) An exemption for a corporate officer of a public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(3) terminates immediately if the officer no longer qualifies for the exemption. For example, the worker may no longer be a bona fide elected or appointed corporate officer, may no longer be a shareholder of the corporation, may no longer exercise substantial control in the daily management of the corporation, or now has primary responsibilities which include the performance of manual labor.

(b) An exemption for a corporate officer of a non-public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(4) terminates immediately if the officer no longer qualifies for the exemption for reasons other than revocation of a voluntary agreement to be exempted from coverage. For
example, the worker may no longer be a bona fide elected or appointed corporate officer or may no longer exercise substantial control in the daily management of the corporation. However, the exemption does not terminate solely because the officer withdraws a voluntary agreement to be exempted from coverage.

(c) An exemption for a corporate officer of a non-public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(5) terminates immediately if the officer no longer qualifies for the exemption because of a change in family relationship, such as a change in marital status. The exemption for all other corporate officers also terminates immediately if the entire group of corporate officers no longer qualifies under WAC 192-310-160(5), except to the extent some or all may remain exempt under WAC 192-310-160(4).

(d) A corporation must notify the department in a form approved by the department of a change in status in which an exemption terminates for a corporate officer who had been exempted. The notice is due by the time the next quarterly tax and wage report is due from the corporation. In addition, a corporate officer may notify the department that the exemption has terminated.

(e) A corporation is responsible for any taxes, penalties, and interest due if an exemption terminates and coverage is reinstated, regardless of whether the corporation provided notice to the department of the termination of the exemption.

(3) A corporation that has exempted one or more corporate officers may elect to reinstate coverage for one or more of those previously exempted corporate officers only under the following conditions:

(a) The window of opportunity to reinstate coverage only exists every five years, beginning in 2014. Corporations may reinstate coverage in calendar years 2014, 2019, and every five years thereafter.

(b) Reinstatement is only effective on January 1, 2014, January 1, 2019, and every five years thereafter. The corporation must send written notice to the department by January 15 for the reinstatement to be effective on January 1 of that year. If written notice is sent after January 15, reinstatement will not be allowed until the next window of opportunity five years thereafter. Reinstatement will not be applied retroactively, except for the period from January 1 until notice is sent by January 15.

(c) Coverage will not be reinstated if the corporation committed fraud related to the payment of contributions within the previous five years, is delinquent in the payment of taxes at the time of the request to reinstate corporate officers, is currently assigned a tax rate for employers who are delinquent on taxes under WAC 192-320-035, or if the commissioner exercises his or her discretion to determine that there are related reasons why the corporation should not be allowed to reinstate coverage of corporate officers.
NEW SECTION. WAC 192-310-180 Are corporate officers covered for unemployment insurance when the corporation has no other employees? [stat. eff 7/22/07 except part of (2); WAC eff. 1/1/08]

(1) If a corporation has no employees and all personal services are performed only by bona fide corporate officers, the corporation is not considered an “employer” or “employing unit” under RCW 50.04.080 and 50.04.090. Services of these corporate officers are not considered “services in employment” under RCW 50.04.165 or WAC 192-310-150 and are not covered for purposes of unemployment insurance unless they specifically elect coverage under subsection (2) of this section.

(2) A corporation that has no employees and in which all personal services are performed only by bona fide corporate officers may elect unemployment insurance coverage if it registers with the department under RCW 50.12.070, elects coverage under RCW 50.24.160, and complies with WAC 192-300-170. The election must cover at least two calendar years and is only effective upon the written approval of the commissioner. Once the election for coverage is approved, it may only be terminated effective January 1 after at least two calendar years and only if the corporation filed a written application for termination of coverage by January 15 of that year.

(3) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

NEW SECTION. WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (Eff. 1/1/08)

(1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a “family member” is a person related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual’s term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, “permanently” means for a period of indefinite duration, but expected to extend at least through the claimant’s benefit year end date. If
at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.