



National Payroll Reporting Consortium

PO Box 850 ★ Henrietta, NY 14467-0850 ★ www.NPRC-Inc.org

June 15, 2015

Ms. Adele Gagliardi
Administrator, Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-5641
Washington, D.C. 20210

**Re: RIN 1205-AB73
Employment and Training Administration (ETA)
NPRM Docket No. ETA-2015-0001
Workforce Innovation and Opportunity Act**

Via <http://www.regulations.gov>

Dear Ms. Gagliardi:

We appreciate the opportunity to offer comments on this Notice of Proposed Rulemaking. The Workforce Innovation and Opportunity Act (WIOA) raises many important issues for employers, State Workforce Agencies and the Labor Market Information system. Members of the National Payroll Reporting Consortium (NPRC) had a number of observations and recommendations related to the potential impact of the NPRM on employer wage reporting. Specifically, the NPRM suggests that several new data elements be collected with the quarterly Unemployment Insurance wage reports that are filed by employers.

NPRC is a non-profit trade association whose member organizations provide payroll processing and related services to over 1.5 million employers nationwide, covering over one-third of the private sector work force. Payroll service providers have long served an important role in our nation's tax collection system as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections, and improve compliance. NPRC actively supports and encourages appropriate electronic filing and related administrative systems to improve efficiency and effectiveness.

NPRC is policy-neutral concerning proposals affecting employer reporting, but serves to provide constructive expertise on such matters. We appreciate the opportunity to assist in documenting key issues, such as feasibility, employer burden and cost related to proposed enhancements to the wage reporting system.

As background, 20 CFR 603.2(k) defines "wage information" to mean information reported under provisions of State law includes wages paid to an individual; the individual's name and Social Security number (SSN); and the name, address, and FEIN of the employer. States collect this information through the quarterly wage reports that employers file. States may require additional data elements in these wage reports, and at least 12 State Workforce Agencies (SWAs) currently require additional data elements.



Most states have retained the original UI focus of the quarterly wage record and collect from each employer only the essential data necessary to efficiently administer UI claims: Employee name, SSN and total wages. Over time, some states have added elements to their UI wage records, such as hours worked, gender, tips, etc., to assist states in the administration of their UI programs. These additions are state-specific with definitions that were created to meet the needs of the state that created the data element. Historically, the state-centric nature of wage record data led to inconsistent federal and state definitions of common elements. The inconsistent definitions contribute to one of the more complicating factors of expanding the UI wage reporting system to interstate or national uses.

We understand and appreciate the significance of potential enhancements to wage reporting, including the possibility of adding new data elements, to Labor Market Information (LMI) systems, educational institutions and, indeed, to the U.S economy. Employer wage reporting provides critical information for many government programs and generates valuable benefits well beyond the administration of Unemployment Insurance and LMI systems. Quarterly wage data is used to locate obligors and establish child support orders, for example, and is recognized as a valuable data source for administering eligibility determinations for Marketplace coverage and premium tax credits under the Affordable Care Act. Further, we note that quarterly wage reporting and LMI systems, as well as surveys used by the Bureau of Labor Statistics, remain largely unchanged since inception. We commend the Department for initiating a comprehensive evaluation and for seeking public comments.

This letter responds primarily to the NPRM excerpt below, concerning potential enhancements to quarterly unemployment insurance (UI) wage reports. Over the past two years, the NPRC was invited by the Workforce Information Council and a number of State Workforce agencies to consider proposals that would add new data elements to UI wage reports, including hourly rate of pay; standard occupational code; hours worked, and worksite location, among others.

Consultations with the WIC and WIAC to improve wage records and the WLMIS. Of course, consistency is not the only concern or area of consultation with stakeholders. There is a long history of interest and discussions among Federal and State agencies and data users about the desirability of making a variety of improvements to wage records that would increase their value and usability. Among these was an effort in the 1990s referred to as the Simplified Tax and Wage Reporting System (STAWRS).

More recently, a subgroup of the Workforce Information Council established under WIA has been researching and developing reports on how to enhance the content of wage records to support improvements in labor market and workforce information. The working group is currently considering possible enhancements, such as adding data elements to the information States collect from employers through the wage reports under 20 CFR 603.2(j), and the potential impact of those enhancements, on State workforce agencies and businesses. This work will result in recommendations to the WIC in the coming year and will provide strong foundational information to support the Secretary's work with the WIAC when it is established.

* * *



Data elements associated with wage records. Potentially establishing new data elements to wage records that employers in all States must report could have benefits similar to standardization. For example, knowing individuals' occupations, along with the wages they earned, would be extremely valuable. . . .

On January 31, 2014, the WIC released its "Phase One Interim Report on Current Practices of Unemployment Insurance Wage Record Collection and Use." This report analyzed the results of a State survey on the benefits of and barriers to enhancing labor market information by adding data elements to the quarterly wage reports employers submit to States as defined in 20 CFR 603.2(j). Among other things, the WIC's survey asked States what additional data elements, aside from Federally-required wage information, States require employers to report. The Phase One Interim Report can be found at: <http://www.workforceinfocouncil.org/Documents/Wage%20Report%20Final.pdf>

While not all States responded, Alaska, Iowa, Minnesota, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, the Virgin Islands, Washington, and Wyoming reported already collecting additional data elements in the quarterly wage reports. The additional elements included the Code, total hours worked in a quarter, total number of weeks worked in a quarter, pay type (salary or hourly), hourly pay rate, gender, job title, worksite address, zip code, and tips. Some of the responding States reported that the additional data elements are extremely helpful for estimating hourly earnings, understanding career progression from occupation to occupation, assessing the effectiveness of workforce training, and making occupational projections.

Asking employers to report and States to collect additional data or data categories through quarterly wage reports, would expand the data collections for many States. The Department is committed to strong stakeholder consultation as strategies are developed to improve and enhance wage records and to striking the appropriate balance between the burden of any new data collection and the value of any additional data elements. In the event the WIAC and/or other stakeholder consultations generate recommendations for such enhancements, the Department will consider additional rulemaking or seek legislative authority, if appropriate.

Request for comment. The Department is interested in receiving comments from States that responded to the survey, and any other States that require additional data elements in quarterly wage reports, on the challenges and benefits of requiring additional data elements in the quarterly wage reports. The Department is also interested in receiving comments from employers and payroll processors who provide occupational data for the quarterly wage records. (p. 454)

We offer the following observations and recommendations related to proposed addition of new data elements to quarterly wage reports.

Definitional Standards Generally

Standard definitions are perhaps the most critical potential contribution of any federal rules, both from the perspective of employers (for whom diverse definitions create complexity in recordkeeping systems), and for the national Labor Market Information system, which also faces complexity and



uncertainty if core elements are defined differently by the states.

For example, for wages to be reportable on a UI quarterly tax and wage report, they must have been paid to an employee working in covered employment (as defined by the state UI law) for an employer. FUTA includes strong incentives for state laws to adhere closely to the broader federal definitions, and yet many differences exist in the definitions of employer, employment, and wages within these state laws. The Simplified Tax and Wage Report Study (STAWRS) reported that there are over 100 definitional differences between FUTA, state UI laws, the Federal Insurance Contributions Act (FICA), and Income Tax Withholding laws. (Several members of NPRC were active participants in the STAWRS project.)

Common data definitions may be very helpful, but may be difficult to achieve. Over the years, states have established diverse legal definitions of some of the core wage reporting elements, such as what constitutes reportable wages, which workers are considered employees and what entities qualify as an employer. Each variation, and in particular each additional data element now collected along with UI wage reports, has been carefully considered and adopted through the legislative process over the years. Standard definitions would require changes to federal law and/or regulations, which would likely necessitate changes to state laws and/or regulations.

Hours Worked

Several states already administer reporting of “hours worked”, but definitions vary between the states. Even within some states (e.g., Oregon) employers must keep two sets of records for hours worked, because workers’ compensation and Unemployment Insurance definitions are different. SWAs that require reporting of hours worked have had to issue extensive guidance on what constitutes an hour worked for the many types of compensation and/or workers that are paid on some basis other than hours of service. Appendix A includes examples of state guidance to employers. There are several differences; for example, paid time off/leave hours are excluded in Oregon, but included in Washington.

For the many types of compensation and workers that are paid on a basis other than hours of service, it may be burdensome for employers to learn about and apply special attribution rules. Examples of compensation and workers for which attribution or other special rules are necessary include:

- Bonuses, tips and other gratuities
- Commissioned or piecework employees
- Disability pay
- Faculty members of colleges and universities
- Fractions of hours
- Holiday pay
- Leave (vacation, sick leave or holiday) hours
- On call time
- Overtime
- Pay in lieu of notice
- Payment in kind



- Payment other than cash
- Practice, preparation, and rehearsal time
- Salaried employees
- School teachers
- Severance/termination pay
- Sick leave pay
- Standby or on-call time
- Training and orientation hours
- Transportation industry employees (interstate)
- Trucking industry employees
- Vacation pay
- Volunteers
- Volunteer Firefighters
- Wages in lieu of notice
- Wages paid less than once per quarter

Hours worked may also be tracked by employers in order to comply with other laws, but those laws and related definitions may not be useful for LMI purposes. For example, large employers are required by the Affordable Care Act to track employee hours of service, but the definitions, exceptions and attribution rules are different than state and Federal Unemployment Insurance and Wage and Hour laws. (For details, see <http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>).

Similarly, “Weeks worked,” which is currently collected in some states, would be facilitated by standard definitions as to what constitutes a week worked (given various forms of leave/paid time off, jury duty, on-call arrangements, educational institutions and the like.) One source of errors, for example, is that the agencies that require reporting of weeks worked generally must announce annually the maximum number of weeks reportable in a quarter (e.g., 13 or 14), and employers occasionally report numbers in excess of the maximum.

It would seem necessary to establish federal definitions to avoid such state variations, both to facilitate employer compliance and to ensure that the results, when aggregated at the national level, are consistent. This may necessitate changes to existing state laws and/or regulations.

Hourly Rate of Pay

Elements such as the hourly rate of pay may be conceptually simple, with respect to hourly workers. As noted above, many types of compensation and/or workers are paid on a basis other than hours of service, and for salaried or other workers paid on any other basis, an hourly rate of pay may not be applicable. In addition, many in the workforce are compensated with wages and various health and welfare benefits, commissions, bonuses, equity and other compensation, which are not reflected in the regular rate of pay. As with hours worked, guidance would be necessary to define what to report and what types of compensation to include or exclude from the reported hourly rate of pay.

Where required, “Hourly Rate” has often been defined diversely and/or vaguely; e.g., “the final



hourly wage of an employee in a quarter.” As noted above, definitions are key to efficient administration. Under this definition, for example (“final hourly wage in a quarter”), employers could be required to check for and report any changes to pay rates that may have occurred after the last payroll processed in a quarter, which would be a difficult extra step and/or extra programming. Instead, it would be more efficient to define the rate of pay “as of the last payroll of the quarter”, because reportable data is generally collected as a function of payroll processing.

We suggest the term “Nominal Hourly Rate of Pay”, and defining it as the rate of pay for cash wages, excluding benefits, bonus, tips and other compensation. Alternatively, if the rate of pay were to include all compensation (including benefits, bonus, tips and other compensation), and if “hours worked” were to be added to wage reports, it would seem unnecessary to collect this element separately, because SWAs could simply calculate the rate of pay by dividing hours into total UI-subject wages. Nominal Rate of Pay is generally available within payroll software/systems, but as noted, it may be necessary to develop guidance related to certain industries and categories of employment and compensation that may need special attribution or estimation rules.

Standard Occupational Classification Codes

Standard Occupational Classification (SOC) codes may be burdensome for employers to establish and maintain with appropriate accuracy, and will require substantial and ongoing outreach, training and audit support from SWAs.

NPRC appreciates the significance and importance of this information to the LMI system, educational institutions and the U.S economy. We are concerned, however, whether employers can realistically be expected to establish and maintain accurate occupational codes for each employee. We are concerned about the impact to economic decision-making if SOC data quality were to erode over time, and we are concerned about the impact to employers as SWAs and LMI organizations seek to educate and enforce this element. (Enforcement is discussed further below).

Employers that use a payroll service provider may benefit from improved software to require and facilitate occupational coding for each employee with drop-down menus and other support. But accuracy will depend upon the knowledge and information available to the person who is using the system. It may be difficult to capture within a drop-down menu system the body of knowledge contained in the U.S. Bureau of Labor Statistics’ Standard Occupational Classification and Coding definitions document (January 2013), which exceeds 200 pages. Alaska’s Occupational Coding manual for employers is 99 pages. Without full knowledge of the nuanced distinctions between different occupations, inaccurate codes may become a problem.

State Workforce agencies and their software developers have developed effective occupation coding systems within the UI and workforce training systems, so perhaps employers may benefit from similar automated systems. However, for the system to produce useful data, it will be critical to study, understand and address knowledge requirements.

Maintenance may be the primary concern. Software can require that certain fields be completed, but once populated, it may not always be apparent to the system that an employee has changed job duties. Over time, occupational codes are likely to become outdated.



Geographic Worksite location

The U.S. workforce is increasingly mobile, in terms of traveling employees, temporary assignments in different locations (whether inter- or intrastate) and telecommuters. It may complicate wage reporting if it becomes necessary to separately report workers with wages from multiple worksites within a quarterly time period. One core principle within SWA wage record systems is that an employer can report no more than one wage record per employee (SSN) for a calendar quarter. The addition of worksite location may require a departure from this principle, which may represent a fundamental and potentially costly change to SWA computer systems and employer payroll and wage reporting systems. With the more flexible capabilities of XML file formats, it may now be feasible to accommodate separate reporting of wages paid by worksite (i.e., multiple records for a single employee, separately stating wages attributable to each worksite location within a quarter), but costs and benefits should be carefully studied before proceeding.

Again, definitions are important, and state proposals in this area have varied considerably. One recent proposal defined the element to report as the worksite location “five digit ZIP code where the employee conducted at least 50% or more of his or her work.” In this instance, we recommended using the term “most” instead of “50% or more,” because some employees working in more than two locations may not perform services 50% or more of the time in any single ZIP code. Also, in this instance, the definition does not seek separate reporting of wages by worksite, but rather identification of the primary worksite of each employee.

If this is the intended outcome, we would suggest reference to the U.S. DOL’s longstanding guidance concerning “localization of services,” which are contained in UIPL 20-04, Localization of Work Provisions, most recently revised on May 10, 2004 (first issued as UIPL 291 in 1952). Multistate employers understand these rules, which generally result in wages being reported to the principal place of employment.

Employers generally report a single address on a state UI wage and tax return; often the IRS-recognized corporate headquarters, which may be in another state. Employers may need to reprogram payroll and wage reporting systems to separately track local worksite addresses, and account for hours and earnings separately. Some states have adopted unit number reporting requirements, which have the same effect but reference worksite addresses maintained separately by the employer rather than requiring each employee record to identify the worksite address within each employee wage record. This approach may generally be more efficient.

Costs

State UI systems already collect quarterly wage records. The enhancement of those wage records will involve considerable costs to update the systems that employers and state agencies use to capture, store, and report wage record data. The report *Enhancing Unemployment Insurance Wage Records – Potential Benefits, Barriers, and Opportunities*, prepared by the Administrative Wage Record Enhancement Study Group, provides some sense of the ability of SWAs to implement enhanced wage reporting on their UI systems. Thirty-eight states provided responses to the survey and only 18 (47%) said they would be able to implement enhanced wage reporting in the future. Many of the 18 respondents qualified their answers by saying they could accommodate enhanced wage reporting only when new systems are implemented, or if federal funds are



provided to pay for the implementation costs. The report indicates that the majority of state UI agencies will not be able to implement enhanced wage reporting unless sufficient funding is provided to pay for system changes.

The Administrative Wage Record Enhancement Study Group is currently working on a survey to collect similar information from the employer and payroll service provider community. Its outcomes will also help to inform the effort to enhance wage reporting. Clearly, some enhancements to wage records are more difficult to implement and administer than others. For example, providing the stated hourly rate of pay for each employee could be a relatively simple data element to report. Conversely, the location of work and the SOC code are considerably more difficult to determine and report. It will be important to include all impacted stakeholders in the review of the costs and benefits of enhancing wage records.

Formats versus Definitions

The NPRM also discusses consistency of wage records and the diversity in data elements and formats collected by the states in the following excerpt:

Consistency of wage records. On the matter of wage records, a number of areas have, in recent years, required policy discussions between the Department and States and other stakeholders. Of these discussions, the one on consistency has gained momentum. State wage records today, while they are a critical component of the WLMIS, suffer from inconsistencies that impede better management of WLMIS, and of the ES more broadly. Wage records have always been a critical data source for administration of the UI program as well as other Federal programs, providing information that supports eligibility determinations and identification and reduction of improper payments. Wage records have increased importance today because States are required to use them to evaluate State performance of the workforce system and education and training providers. Additionally, wage records play a key role in Federal evaluations of the workforce system's programs. The expanded use of wage records for such a wide range of purposes requires consistency and quality of the data in order to maximize its use.

Regrettably, such consistency is lacking. The wage data employers must report on their quarterly wage reports to their State and the formats they must use to report it vary, State-by-State. While employers filing wage reports described in Federal regulations at 20 CFR 603.2(j) must, at a minimum, report the three data elements described in 20 CFR 603.2(k), State law may require them to report additional elements. And because States differ in how they define certain data elements—including the three elements listed in § 603.2(k)—different States may prescribe different reporting formats for the same data elements.

. . . the Department interprets the requirement in the Job Creation Act to standardize data exchange to include the requirement that the Secretary consult with the WIAC and develop a set of common data definitions. The Wagner-Peyser Act, especially when read in the context of these two other statutes and the amendments made to it by WIOA, exhibits the same focus and expectation. Proposed §§ 652.300 through 652.303 enable all of this work to proceed through a collaborative approach that brings in other Federal agencies, States, and the public through the newly constituted WIAC.



* * *

Secretary of Labor's role concerning wage records under WIOA. Proposed § 652.302 explains how the Secretary's responsibilities concerning the WLMIS apply to the wage record component of WLMIS. That is, the proposed regulation reflects how the Department would apply the broader Wagner-Peyser expectations for improvement of labor market data sources, including those related to consistency and standardization, to one specific source – wage records.

Proposed § 652.302(b) would clarify that pursuant to his/her responsibility to oversee the development, maintenance, and continuous improvement of the WLMIS, including the numerous duties set forth in the Act and restated throughout this preamble, the Secretary will seek to develop standardized definitions of the data elements in wage records, and improved processes and systems for the collection of and reporting of wage records. As proposed, this provision would authorize the Secretary to develop common data definitions and standardized reporting formats that are consistent across States. (emphasis added)

Comments:

The subject of definitions is discussed above, and in general we agree that diverse definitions have had the effect of complicating payroll and wage reporting administration for employers, and potentially obscuring LMI data aggregated from the various states.

Diverse formats may no longer be a serious problem. Most SWAs have come to support several different formats for employer wage reporting, largely in order to accommodate the requests and preferences of different employer groups. Generally, SWAs accept two nationally-accepted standards for wage reporting, namely the Social Security Administration's EFW-2 Format, and a standard wage reporting format negotiated through the National Association of State Workforce Agencies (NASWA). SSA's format includes records and data fields intended for state use for wage reporting purposes. The NASWA format was similarly designed to enable employers to accommodate the diverse reporting requirements of every state using the same essential file format. Both formats offer open space and/or variable-use data fields so that states are able to easily modify and add reporting elements. Additionally, newer XML data formats further facilitate variations in data formats and data elements.

Our assessment is that diverse electronic formats for wage reporting are not a significant problem. Conversely, although the concept of a unified electronic wage reporting format is a compelling goal, it may not be achievable in any practical sense, and adoption of a unified data format may generate unnecessary and unproductive workload for employers. Again, many SWAs currently support different formats at the request of different employer groups. Adoption of a uniform format may require smaller employers that have long used simplified state-specific data formats, for example, to convert to a much more complex process, or even to revert to paper reporting, where allowed. Any broad changes necessary to adopt a uniform format would impose substantial workload on employers and SWAs, with little offsetting benefit.

A unified electronic wage reporting format may not be achievable because state legislatures occasionally add or change employer reporting elements; usually to address perceived UI issues, but occasionally for other reasons. If federal regulations were to prohibit variations or new



elements in wage reporting, states may eventually enact entirely separate employer reporting obligations.

Enforcement

Enforcement policy will also be a critical element. While we appreciate the goal of enhancing wage records to improve LMI capabilities and analysis, every added data element could complicate and impede the core purpose of wage reporting, which is to facilitate prompt payment of UI benefits when due.

By “enforcement”, we are raising the question of how SWAs should respond when any of the new/proposed data elements are apparently missing or incorrect. There are significant concerns about potential actions to enforce the Occupational code in particular. We recommend that SWAs not reject entire UI quarterly tax and wage reports if an occupational code is missing. However, because all of the relevant SWA and employer systems are built to accept or reject entire employer submissions, that may be the alternative. (In other words, no state systems reject individual employee wage records from an employer report, and no payroll system/software is able to accept, modify and re-file a rejected employee record.)

If a state adopted a policy of rejecting employer submissions with missing SOC codes (for example), the private sector would likely adapt by removing any employee records with missing SOC codes from the file prior to filing the employer return and wage report. This would reduce reported wages and taxes, at least until the employer could follow up with an amended return to add the missing employee(s).

There are many questions and a range of potential responses inherent in data quality measures. Might states reject an entire wage report for apparently incorrect elements, such as worksite address or hours worked? Employer addresses may not comply with U.S. Postal standards; e.g., may reference a Rural Route number or PO Box. Certain elements can be validly empty or zero (such as hours worked in the case of severance). In some cases, states have sought to require separate explanatory codes to denote that certain data fields were left blank intentionally, which is a costly administrative process. What reasonableness standards might a state establish? For example, what if half of all employees are reported with zero hours? How would occupational codes be validated? Might a state reject a wage report or issue a notice if an auto manufacturer, for example, reported a new employee with an occupational code of “funeral director”?

In general, we would urge policymakers not to adopt an approach of rejecting UI quarterly tax and wage reports if new wage report elements are missing or apparently invalid. This would adversely impact the core elements of the UI program, including the prompt payment of UI benefits and the collection of UI taxes. We would suggest, instead, appropriate warning messages and escalating notices if an employer continues to report missing or obviously invalid data for a particular employee.

Further, we suggest that for at least a one-year transition period, that SWAs accept either a default occupation code defined by the employer, or an occupation code denoting “unknown” or “pending”. This would offer the LMI system insights into the need for additional employer education and outreach, without jeopardizing the core wage and tax reporting.



Again, we appreciate the opportunity to comment on the NPRM as to the feasibility of wage record enhancements and related topics. While the NPRC represents payroll service providers and hence cannot speak for employers, members of the organization have extensive experience in complying with the UI wage reporting requirements in every state, and understand the systemic and operational implications of new data elements. We would be happy to meet with the Department and to participate in initiatives to study and develop alternatives in this area. Please call me at (909) 971-7670 or by e-mail at pete_isberg@nprc-inc.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Isberg", is positioned above the printed name.

Pete Isberg
National Payroll Reporting Consortium

Appendix A: Hours Worked Reporting

State Definitions and Rules for Hours Worked

Following is a compilation of state definitions and related rules for reporting of hours worked within quarterly wage reports. These are merely illustrative examples, and may not reflect the most current or comprehensive information concerning such reporting.

District of Columbia

DEFINITIONS

☐ **Hour worked** is any hour in which the covered employee is engaged in a work activity. The actual number of hours worked by the employee for the quarter shall include paid vacation and holiday hours.

☐ **Wages** includes all remuneration for personal services paid by an employer to an employee. See D.C. Official Code § 51-101(3).

REPORTING REQUIREMENTS

Employers who track hours worked must use those records to determine actual hours and partial hours worked. Whatever method is used to calculate workers' withholdings must also be used for the employer's contributions, and vice versa. Do not use any other measure of time worked such as "weeks." Use whole numbers only, with no fractions or decimal amounts. Fractional hours should be rounded to the next higher whole number. If there are no hours to report for the quarter, enter "0."

HOURS TO REPORT

Vacation pay:

Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

Sick leave pay:

Any payments to an employee under a qualified plan for sickness, accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

Overtime:

Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

Commissioned or piecework employees:

Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee for 40 hours worked for each week in which any of their duties were performed.

Wages in lieu of notice:

When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated the amount of wages they would have earned during the notice period.

Salaried employees:

If a salaried employee works other than the regular 40-hour week, report the actual number of hours worked.

Faculty employees:

Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time. If there is no reliable hourly information, report the hours of instruction as part-time based on 15 credits as a full-time teaching load and 35 hours as full-time employment for a week. For example, an instructor teaches twelve credits per week. Twelve divided by fifteen equals eighty percent. Thirty-five hours times eighty percent equals twenty-eight hours. The employer should report the twenty-eight hours to DOES on the employer's quarterly tax and wage report.

Severance pay:

Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

Payment in kind

Report the actual hours worked for services rendered.

Bonuses, tips and other gratuities

Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

Fractions of hours

If the employee's total number of hours for the quarter results in a fractional amount, round the total to the next higher whole number.

Practice, preparation, and rehearsal time

If an employee who is a performer or part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the

Massachusetts Hours Worked Guideline

"How do I report hours worked? General Rule:

1. If the employer knows the actual number of hours worked, the employer should report that figure.
2. If the employer does not know the actual number of hours worked, the employer should:
 - A. for full-time employees use 40 hours per week.
 - B. for part-time employees, employer should estimate the number of hours.
 - C. for full-time plus, employer should use 40 hours per week plus an estimate.

Overtime: The employer should report the number of hours actually worked for which overtime pay or compensatory time is paid, without regard to the overtime pay rate. Compensatory time should be reported when taken, not when earned.

Fractions of hours: If the employee's total number of hours in a quarter results in a fractional amount, the total figure should be rounded to the nearest whole hour. If the fraction is "1/2 hour" or more it should be rounded up to the next whole hour, and if it's less than a 1/2 hour, it should be rounded down.

Vacation/sick/holiday pay: The actual number of hours for which an employee receives vacation, sick or holiday pay should be reported. Vacations, sick days and Holidays without pay should not be counted as hours worked.

On call: Hours in which the employee is carrying a pager, or is otherwise "on call" should not be included in the "hours worked" calculation.

Employees not paid by the hour: These include salaried workers and those paid by commission. Also included are workers who are paid by the mile, by piecework, by the acre, by the payload, by reductions in rent, or other non-hourly rates. When the actual number of hours worked is available, it should be reported. In the absence of reliable figures, full-time employees should be reported at the rate of 40 hours per week; hours worked by part-time employees and those who work more than full-time should be estimated.

Wages paid less than once per quarter: This will occur most often with corporate officers who are paid only once or twice a year. The employer should report the number of hours worked in any quarter in which no wages were paid, along with \$0 wages. Then, when wages or salaries are finally paid, only the hours worked in that specific quarter should be reported. If the actual number of hours worked is available, it should be reported. In the absence of reliable figures, full-time employees should be reported at 40 hours per week; hours worked by part-time employees and those who work more than full-time should be estimated.

Faculty members of colleges and universities (includes technical and community colleges): If the faculty member is considered to be a full-time employee, 40 hours per week paid should be reported. If the faculty member is considered to be part-time, an estimate of the actual hours worked should be made.

School teachers: When teachers or other staff work nine months but are paid over 12 months, their hours should be reported in the quarters that they actually work. For part-time faculty, coaches, etc., if hours are not known, employers may establish an hourly rate of pay and divide that into quarterly gross wages to obtain an estimate of hours.

Volunteer Firefighters: Employers can establish an hourly rate of pay and divide that amount into the quarterly gross wages to obtain an estimate of hours.

Bonuses, tips, and other gratuities: No additional hours should be reported if hours have been reported for regularly compensated services.

Severance/termination pay: No additional hours should be reported for severance pay. Severance and termination pay compensate the employee for the separation from employment, not for actual hours worked.

Please note:

1. The maximum number of hours reportable in any quarter is 999.
2. The hours worked field will not produce a "fatal error".

<http://www.mass.gov/lwd/unemployment-insur/ui-online-dua-quest/hours-worked-guideline.html>

Oregon 471-031-0085 Employer Wages and Hours of Work Report

Determining Hours Worked

7. What is the definition of hours worked? An hour worked is an hour in which the worker is engaged in a work activity. The WBF assessment is based upon hours or parts of hours worked. (See #20 below for how to treat partial hours worked.)

8. How are hours calculated? Employers who track actual hours worked should use those records to determine actual hours and parts of an hour worked by each worker. Employers of workers who are salaried, paid on commission, paid "by the piece", or who work on an honor system, are not required to track actual hours worked. If hours are not tracked, choose the method that assures the most reasonable estimate of hours worked. If determining total hours

using a flat rate calculation, use 173.33 hours per month, 40 hours per week, or 8 hours per day (pro rated for part-time workers). If hours are not tracked but the employer has information available showing hours worked, such as a contract, this information may be used to determine or reasonably estimate hours worked. However, if any method other than actual tracking or the flat rate calculation is used to determine a reasonable estimate of hours worked, the employer must maintain documentation of the method used in case of an audit.

9. Are **overtime hours** included? Yes. When calculating overtime hours, track only actual hours worked and not hours paid (eg. two hours worked overtime paid at twice the hourly wage is calculated as two hours worked, not as four hours paid).

10. Are **leave (vacation, sick leave or holiday) hours** included? It depends. If actual hours worked are tracked: Do not include leave (vacation, sick leave and holiday) hours. If hours worked are determined using the flat rate calculation: If a tracking system is available for recording leave (vacation, sick leave or holiday) hours, then subtract leave hours from the calculated total. If no tracking system is available to track leave hours, use the calculated total with no adjustment for leave hours.

11. Are **training hours and orientation hours** included? If the worker is required by the employer to attend, include hours attending orientation or training.

12. Is **standby or on-call time** included? No.

13. Workers work part-time. How are hours worked calculated? Either track actual hours worked or, only if hours are not tracked, use the appropriate fraction of the appropriate flat rate to calculate hours worked. For example, for half-time workers paid weekly or biweekly, use a flat rate of 1/2 of 40 hours per week to calculate hours worked. For half-time workers paid monthly or semi-monthly, use 1/2 or 1/4 of 173.33 hours per month as a flat calculation. Document how the calculation was made.

14. Employer has both part-time and full-time workers. Can the flat rate be used for the full-time workers and actual hours be tracked for the part-time employees? **IMPORTANT!** The flat rate may not be used for any workers, full- or part-time, whose hours are tracked. However, the employer is not required to use same method for all workers. If hours are not tracked for the full-time workers but are for the part-time workers, use the flat rate for full-time workers and the actual hours tracked for part-time workers.

15. Employer has monthly salaried employees working overtime. Must hours be tracked or may the flat rate be used? The flat rate may be used. Nothing in the governing law or administrative rules requires employers to track hours. However, if the flat rate is used to calculate workers' withholdings, it must also be used for the employer's contributions, and vice versa.

16. Workers are paid a biweekly salary. Workers track their hours, but report them to the employer subsequent to each pay period. (In other words, the employer pays ahead.) Where hours are tracked but reported after pay, can the flat rate be used to calculate the assessment or must the tracking method be used? If an employer is paying by the hour before timesheets are collected, payment must be calculated on base hours worked, with adjustments for overtime or leave time made in the subsequent pay period. The assessment can be calculated the same way. The assessment may be based upon the base hours assumed worked during a pay period, and any adjustment to actual hours worked may be used to calculate the assessment in the following pay period.

17. **Trucking industry employees** are paid by the mile or by the trip (regardless of number of hours worked) and hours are not tracked. How does trucking industry calculate hours worked? For definitive help on this subject, trucking industry employers can contact the Oregon Trucking Association in Portland at 503-513-0005.

Source: OREGON EMPLOYMENT DEPARTMENT
Workers' Benefit Fund assessment
OREGON DEPARTMENT OF CONSUMER & BUSINESS SERVICES (DCBS)
Stat. Auth.: ORS 657.610

Minnesota Hours Worked

The total number of paid hours worked should relate to the wages reported on the Quarterly Wage Detail Report. If services are performed in one quarter and corresponding wages are paid in the following quarter, it is important that both the wages and the hours worked be reported in the quarter in which they are PAID.

In general, when the actual number of hours worked is known, it should be reported. When reliable figures are unavailable, full-time employees should be reported at the rate of 40 hours per week. Hours worked by part-time employees and those who work more than full-time should be estimated.

- a. **Overtime:** The employer should report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the overtime pay rate. Compensatory time should be reported when taken, not when earned.
- b. **Fractions of hours:** If the employee's total number of hours in a quarter results in a fractional amount, the total figure should be rounded to the nearest whole hour. If the fraction is 1/2 hour or more, it should be rounded up to the next whole hour. If it's less than a 1/2 hour, it should be rounded down. (In all fixed field formats, Hours Worked must be three (3) whole numbers only.)
- c. **Vacation/sick/holiday pay:** The actual number of hours for which an employee receives vacation, sick or holiday pay should be reported. Vacations without pay should not be counted as hours worked. Hours worked should not be counted for cash payments in lieu of vacations. Third party sick pay is not reportable as wages, and therefore should not be counted as hours worked.
- d. **Disability pay:** If the employer pays their own temporary disability pay, the employee is not attached to the work force, and therefore it should not be counted as wages or hours worked.
- e. **On call:** Hours in which the employee is carrying a pager, or is otherwise "on call" should not be included in the hours worked calculation.
- f. **Employees not paid by the hour:** These include salaried workers and those paid by commission. Also included are workers who are paid by the mile, by piecework, by the acre, by the payload, by reductions in rent, or other non-hourly rates. When the number of hours is available, it should be reported. In the absence of reliable figures, full-time employees should be reported at the rate of 40 hours per week. Hours worked by part-time employees and those who work more than full-time employees should be estimated. (Hours worked could also be

- determined by taking the total wages paid to the worker during the quarter and dividing it by an estimated hourly rate for the worker.)
- g. Wages paid less than once per quarter: This will occur most often with corporate officers who are paid only once or twice a year. The employer should report the number of hours worked in any quarter in which no wages were paid, along with \$0 wages. Then, when wages or salaries are finally paid, only the hours worked in that specific quarter should be reported along with the wages paid in the quarter. If the actual number of hours worked is available, it should be reported. In the absence of reliable figures, full-time employees should be reported at 40 hours per week. Hours worked by part-time employees and those who work more than full-time should be estimated. (Corporate officers should be identified by the “officer code” which is described in the next section.)
 - h. **Faculty members of colleges and universities** (includes technical and community colleges): If the faculty member is considered to be a full-time employee, 40 hours per week paid should be reported. If the faculty member is considered to be part-time, an estimate of the actual hours worked should be made.
 - i. **School teachers**: When teachers or other staff work 9 months but are paid over 12 months, their hours should be reported in the quarters that they actually work. For part-time faculty, coaches, etc..., if the hours are not known employers can establish a reasonable hourly rate of pay and divide that into quarterly gross wages to obtain an estimate of hours.
 - j. **Volunteer Fireman**: Employers can establish a reasonable hourly rate of pay and divide that amount into the quarterly gross wages to obtain an estimate of hours.
 - k. **Severance/termination pay**: No additional hours should be reported for severance pay. Severance and termination pay compensate the employee for the separation from employment, not for actual services performed.
 - l. **Bonuses, tips, and other gratuities**: No additional hours should be reported if hours have been reported for regularly compensated services.

Please Note: The maximum number of hours reportable in any quarter is “999”.

Source: Minnesota - Employer’s Guide To Magnetic Media Reporting A-14

Washington Employment Security department A Handbook for Washington State Employers

Revised January 2011

Hours you must report

When completing your tax and wage reports, you must report hours for:

- All hours worked during the quarter

- **Vacation pay** – Report the hours for leave with pay. If you make a cash payment in place of vacation time, do not report those hours
- **Overtime** – Report actual hours worked
- **Commissioned employees** – Report actual hours worked. If hours are not tracked, report 40 hours per week for full-time employees
- **Pay in lieu of notice** – Report the hours that would have been worked
- **Salaried employees** – Report actual hours. If hours are not tracked, report 40 hours per week.
- **Payment other than cash** – Report actual hours worked.

Failure to report hours may result in a penalty (see page 8).

For **severance pay, bonuses and tips**, report zero (0) hours. You may have to report hours for sick leave and faculty employees. For detailed instructions, read the rule (WAC 192-310-040) at www.esd.wa.gov/rcw-wac or contact your District Tax Office (see page 24).

Note: **Do not report fractions of hours** – round up to the next whole number.

WAC 192-310-035 Employer reports -- Failure to report or incorrectly reporting hours or wages. (1) If an employer does not report hours worked and a former employee ((files)) applies for benefits, the department will divide the wages earned by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked.

(2) If the employer later provides the actual hours worked, the department will recalculate the former employee's claim

(3) If the claim is voided((;)) or benefits are reduced as a result of the recalculation, the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 49.46.020. 99-20-134, § 192-310-035, filed 10/6/99, effective 11/6/99.]

AMENDATORY SECTION(Amending WSR 99-20-141, filed 10/6/99, effective 11/6/99)

WAC 192-310-040 Employer reports -- Further defining hours worked (RCW 50.12.070).

This section defines the hours that employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

(2) **Sick leave pay.** As provided in RCW 50.04.330(1), any payments made to an employee under a qualified plan for sickness or accident disability insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

(3) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee for 40 hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated by the employer for the amount of wages they would have earned during the notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular 40-hour week, report the actual number of hours worked. If there are no reliable time keeping records, report 40 hours for each week in which a full-time salaried employee worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time.

(a) If there is no reliable hourly information, report the hours of instruction as part-time based on 15 credits as a full-time teaching load and 35 hours as full-time employment for a week. For example, an instructor teaches 12 credits per week. 12 divided by 15 equals 80%. 35 hours times 80% equals 28 hours. The employer should report the 28 hours to the department on the employer's quarterly tax and wage report.

(b) Any part-time salaried instructor who does not establish a valid claim because of this formula($\frac{12}{15}$) may provide the department with evidence of hours worked that exceeds the hours reported by the employer.

(8) **Severance pay.** Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(12) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

[Statutory Authority: Chapters 34.05 and 50.12 RCW, RCW 50.12.070 and 50.04.330(1). 99-20-141, § 192-310-040, filed 10/6/99, effective 11/6/99.]