VERBATIM RECORD OF RULEMAKING HEARING
WAITING PERIOD, PRORATION AND WEEKLY CLAIM HOURS,
PETITIONS FOR REVIEW
Tuesday, April 5, 2022
Olympia, Washington

APPEARANCES:

PRESIDING: JANETTE BENHAM
RULES COORDINATOR
LEAVE AND CARE DIVISION
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MS. JANETTE BENHAM: Good morning. My name is Janette Benham, and I'm the Rules Coordinator for the Leave and Care Division of the Washington State Employment Security Department. Thank you, everyone, for joining us today for this rulemaking hearing. I'd like to discuss a few housekeeping items before we begin the hearing.

Just a reminder that this meeting concerns proposed regulations regarding the Paid Family and Medical Leave program. This meeting will not feature discussion of any specific application and attendance is completely optional. If you have questions regarding your own application or weekly claim for Paid Family and Medical Leave, or if you have other general questions, please call our customer care team at 833-717-2273. Again, that was 833-717-2273. We won't be able to answer any questions during this meeting.

Today's hearing is regarding the rule proposal that revises sections of Washington Administrative Code regarding the required waiting period and submitting petitions for review. If you would like to provide written comments related to these rules, you may do so by e-mail at rules@esd.wa.gov. Again, that was rules, r-u-l-e-s, @esd.wa.gov. We'll continue to accept written comments through the close of business today.

To view the electronic version of the proposed rules, you can go to the paidleave, all one word, wa.gov/rulemaking. Again, all one word. That was paidleave, p-a-i-d-l-e-a-v-e wa.gov/rulemaking, r-u-l-e-s, m-a-k-i-n-g. Under the current rulemaking heading, the proposed rules are under the first topic titled Waiting Period and Other Topics. Click on the plus sign next to the rules to expand the topics. Rules for today's hearing are listed after the Proposed Rules title.

Before we begin, are there any questions about the purpose of today's meeting or where to find the proposed rules? Remember, you can unmute yourselves using your Teams window or by hitting star 6 if you're joining by phone. And I'll pause for just a second for people to unmute if you have questions.

MS. ROSE GUNDERSEN: Thank you. I have -- this is Rose Gundersen from Washington Retail. So is it CR 102 that is being discussed today?

MS. JANETTE BENHAM: Yes. The CR 102 is the filing document that's filed with the code revisor. Right after CR 102 there is Proposed Rules, and if you click on each of those proposed rules topics, it will bring up the proposed rules that we'll be going through during the hearing today.

MS. ROSE GUNDERSEN: Yeah. It would -- I'm not sure who I'm talking with right now. Sorry.

MS. JANETTE BENHAM: This is Janette Benham. I'm the Rules Coordinator for the Leave and Care Division.

MS. ROSE GUNDERSEN: Yeah. It would have been nice -- in the e-mail invitation that was sent, it didn't really specify what rules are going to be reviewed. It just tell us to go to the Rules page, and then, you know, there are multiple items on that page, and I was wondering -- yeah, I mean, you have it in the email. Okay. Never mind, I --

MS. JANETTE BENHAM: Are you able to find the Rules page?

MS. ROSE GUNDERSEN: Yeah. Yeah. Thank you.

MS. JANETTE BENHAM: Sure. Are there any other questions or does anyone need me to repeat how to find the Proposed Rules we'll be discussing today?

(No response)

MS. JANETTE BENHAM: Okay. So we'll go ahead and start the hearing. Pursuant to the authority given under Washington State Law RCW 50A.05.060, Chapter 42.30 RCW of the Open Public Meetings Act, and Chapter 34.05 of the Administrative Procedure Act, this hearing is hereby convened.

For the record, this hearing is beginning at 9:05 a.m. on April 5, 2022, online and by conference call. This hearing is convened to consider testimony concerning Paid Family and Medical Leave.
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1 Family and Medical Leave rulemaking. At a high level, this
2 rulemaking clarifies requirements regarding the required
3 waiting period, adds the ability for individuals to e-mail
4 petitions for review to the Commissioner's Review Office,
5 and makes technical changes.
6 Notice of this hearing was filed and published in the
7 Washington State Register on March 2, 2022, as WSR number
8 22-06-093, was sent to interested parties, and was posted
9 on the department's webpage.
10 My name is Janette Benham, and I'm the rules
11 coordinator for the Leave and Care Division of the
13 I represent Commissioner Cami Feek as the hearing
14 officer presiding at this public rulemaking hearing.
15 There is another member of the Leave and Care
16 Division -- the Leave and Care Policy Team attending this
17 hearing.
18 Please introduce yourself by name and title.
19 MS. AMUNDSON: Hi. My name is April
20 Amundson. I'm the Policy and Rules Manager for the Leave
21 and Care Division, and I wanted to say thank you to
22 everyone who are joining us today. We really appreciate
23 your feedback on our rulemaking effort.
24 MS. JANETTE BENHAM: Thank you, April.
25 Please be advised that this hearing is being

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1 transcribed by a court reporter and is also being recorded
2 by the Microsoft Teams Platform. The transcript and
3 recording will become a part of the official rulemaking
4 file. To facilitate this transcription, please state and
5 then spell your name before your testimony. If you are
6 here in a representative capacity, please also include who
7 you are providing testimony on behalf of.
8 Please also note that this hearing is convened to
9 consider comments on the proposed rules. Because of the
10 formal nature of this hearing, we are unlikely to answer
11 any questions you may ask. If you do pose a question, I
12 I'll ask you to rephrase your question as a comment.
13 Questions can be e-mailed to us at paidleave@esd.wa.gov.
14 Again, that's paidleave, all one word, @esd.wa.gov. where
15 our customer service support staff will respond to your
16 question. Any written comments on the proposed rule will
17 be accepted through today by e-mail at rules@esd.wa.gov.
18 Again that was rules, R-U-L-E-S, @esd.wa.gov.
19 A Concise Explanatory Statement of the agency's
20 reasons for adoption of the rules, including a summary and
21 response to all comments received after the publication of
22 the Proposed Rules, will be placed in the permanent
23 rulemaking file, and will be posted online. This document
24 will be sent to all interested parties who have signed up
25 to receive Paid Family and Medical Leave rules e-mails.

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1 We will begin with April Amundson who will provide a
2 brief explanation of the proposal.
3 MS. AMUNDSON: Thank you, Janette.
4 The proposed amendments that we're going to be
5 reviewing today provide clarification regarding the
6 required waiting period. The amendments clarify that a
7 waiting period doesn't reduce the maximum duration of an
8 employee's available Paid Family or Medical Leave benefits
9 and the waiting period does not apply to medical leave
10 taken upon the birth of a child. The proposed amendments
11 will align with RCW 50A.15.020. Other proposed amendments
12 clarify that proration of benefits and the calculation of
13 typical work week hours do not apply to the waiting period.
14 There is also a proposed amendment that allows petitions
15 for review to be e-mailed to the Commissioner's Review
16 Office and provides that e-mail address. In addition,
17 there are several technical changes that have been made to
18 align with rules language with the numbering format
19 required by the Office of the Code Reviser.
20 I truly encourage you all to read the text of the
21 rules and the supporting documents for a more robust
22 understanding.
23 Thank you for your interest and participation in our
24 rulemaking efforts and we look forward to hearing your
25 comments today. Thank you.
MS. APRIL AMUNDSON: Abigail O'Connell has her hand up.

MS. JANETTE BENHAM: Go ahead, Abigail.

MS. ABIGAIL O'CONNELL: Hi. My name is Abigail O'Connell. Can you hear me?

MS. APRIL AMUNDSON: We can hear you.

MS. ABIGAIL O'CONNELL: Okay. My last name is spelled O-apostrophe-C-O-N-N-E-L-L, and I'm senior counsel for Sun Life. And I guess I would just ask -- I know there's been solvency issues -- whether the removal of the waiting week for medical leave was rated for, meaning the waiting period for medical leave due to birth.

MS. JANETTE BENHAM: Thank you, Abigail.

MS. MARILYN WATKINS: Hi, this is Marilyn Watkins from the Economic Opportunity Institute. Again, my name is spelled W-A-T-K-I-N-S. And I'm a member of the Paid Leave Project.

Any other comments on WAC 192-620-035, How will the Department determine the number of hours of paid family or medical leave an employee claims to which they're entitled in that final week of their claim?

Family Medical Leave Advisory Committee. And I would like to offer support for these amendments as fully in keeping with the legislative intent both of the original legislation and of the legislation passed this most recent legislative session. Thank you.

MS. JANETTE BENHAM: Thank you, Marilyn.

Is there anyone else who would like to provide comment on WAC 192-500-185? MS. CAROLYN CALDERON: Hi, there. This is Carolyn Calderon. My last name is spelled C-A-L-D-E-R-O-N. I'm calling from Ste. Michelle Wine Estates, and a question about a comment about the waiting period. I'm -- I'm --

I would like consideration to be added that maybe a phrase go in there in regards to intermittent leave and the impact of that in regards to the waiting period just for clarity, to kind of put everything all in one place in regards to the waiting period. That's it.

MS. JANETTE BENHAM: Thank you, Carolyn.

Anyone else who has comments on WAC 192-500-185? MS. APRIL AMUNDSON: I want to confirm that Abigail O'Connell didn't have any other comments. The hand was still raised. I did lower it, but I wanted to confirm whether or not you had more comment to provide.

MS. ABIGAIL O'CONNELL: Confirmed. No further comments, thank you.

MS. JANETTE BENHAM: If there are no other comments on this rule, we'll move to the next rule.

The next rule we'll accept comment on is WAC 192-620-035, When will a weekly benefit amount be prorated?

Proposed amendments to this rule clarify that proration of benefits does not apply to the waiting period. Additional proposed amendments have been made to align the rules language with the numbering format required by the Office of the Code Revisor.

We are now ready to accept public comments for WAC 192-620-035, When will a weekly benefit amount be prorated from those in attendance. I will give everyone the opportunity to unmute themselves and provide any comments on this proposed rule.

MS. MARILYN WATKINS: Hi, this is Marilyn Watkins from the Economic Opportunity Institute. Again, that's W-A-T-K-I-N-S. And I'd like to offer support for the amendment that is made in section 3, that the waiting week -- that the section doesn't apply to the waiting period. However, I would also want to reiterate the concerns with the proration for somebody's potentially final week of leave that's provided here as inconsistent with the plain language of the statute and not fairly representing people's actual amount of leave and benefits to which they're entitled in that final week of their claim.

and would again reiterate the objections that were made during the rules last -- rule hearing last summer on those same final sections of the -- of this part. Thank you.

MS. JANETTE BENHAM: Thank you, Marilyn.

Are there any other comments on WAC 192-620-035? (No response.)

MS. JANETTE BENHAM: Hearing none, I would go ahead and move to the next rule. The next rule we'll accept comment on is WAC 192-620-040, How will the Department determine the number of hours of paid family or medical leave an employee claims each week?

Proposed amendments to the rule clarify that the calculation of typical work week hours does not apply to the waiting period.

We're now ready to accept public comment for WAC 192-620-040, How will the Department determine the number of hours of paid family or medical leave an employee claims each week?

And I'll pause here and we'll go ahead and accept comments. If individuals would like to unmute themselves or press star 6 if they're calling in by phone.

MS. JANETTE BENHAM: Is there anyone on the conference call?

Comment that would like to provide comment on the WAC 192-620-040?
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1. MS. ROSE GUNDERSEN: This is Ms. Gundersen with Washington Retail with concerns about partial -- what if a week has -- what if the waiting period applies to part of the week? Do you also not apply this WAC to that week when part of it is applicable to the waiting period.

2. MS. JANETTE BENHAM: Rose, if you could please restate your question as a comment for the rules hearing, that would be great.

3. MS. ROSE GUNDERSEN: Okay. I will make it more clear. What if the week you are talking about also is -- a part of the week is the waiting period? Does this WAC not apply to that whole week if only part of the week is -- applies to the waiting period?

4. MS. JANETTE BENHAM: So we're not able to actually answer the questions during the rules hearing, so if you would like to restate your question just as a comment, if you could please do that, that would be great.

5. MS. ROSE GUNDERSEN: Okay. Why don't I think about it, and I'll put it in the Chat.

6. MS. JANETTE BENHAM: Actually, the Chat is disabled, but we are accepting written comments through the close of business today, and if you want to provide a written comment, you can e-mail that to us at rules@esd.wa.gov, if that would be helpful for you.

7. MS. ROSE GUNDERSEN: Sure.

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1. MS. JANETTE BENHAM: Thank you.

2. MS. ROSE GUNDERSEN: I haven't had time to really prepare for this, so I apologize.

3. MS. JANETTE BENHAM: That's okay. We are happy to accept comments at that rules@esd.wa.gov e-mail address through the close of business today.

4. MS. JANETTE BENHAM: Is there anyone else who would like to provide comment on WAC 192-620-040?

5. (No response)

6. MS. JANETTE BENHAM: Okay, we'll go ahead and move on to the final rule for today's hearing. The last rule we'll accept comment on for today's hearing is WAC 192-800-125, When is a petition for review considered delivered to the department?

7. MS. JANETTE BENHAM: Proposed amendments to the rule add the ability for individuals to e-mail petitions for review to the Commissioner's Review Office and add the e-mail address where those petitions may be sent.

8. MS. JANETTE BENHAM: So we're now ready to accept public comment for WAC 192-800-125, When is a petition for review considered delivered to the department?

9. MS. JANETTE BENHAM: I'll pause here and provide an opportunity for individuals to unmute themselves or press star 6 if you're calling in by phone and give individuals the opportunity to provide comment.

10. (No response)
written submissions will become part of the official record.

The deadline for submission of written comments is today, April 5, 2022. You may submit written comments by mailing rules, r-u-l-e-s, @esd.wa.gov. Comments must be received by the end of the day to be considered part of this rulemaking.

A final decision regarding adoption of the proposed rules will be made after all testimony and written comments have been fully considered, which will be on or after April 12, 2022.

On behalf of acting Commissioner Cami Feek, thank you for participating in this hearing.

This hearing is adjourned at 9:27 a.m. on April 5, 2022.

MS. APRIL AMUNDSON: Thank you for attending. Have a great day, everyone.

And thank you for attending, court reporter. I don't have your name necessarily, but I appreciate that you were here in attendance. Thank you.

(Concluded at 9:27 a.m.)

CERTIFICATE

I, DIXIE J. CATTELL, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, do hereby certify:

That the foregoing Rulemaking Hearing was taken before me and completed on the 5th day of April, 2022, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the Rulemaking Hearing and promptly serving the same upon JANETTE BENHAM.

IN WITNESS WHEREOF, I have hereunto set my hand this 13TH day of APRIL, 2022.

Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346
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