
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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| PRESIDING: | JANETTE BENHAM RULES COORDINATOR LEAVE AND CARE DIVISION |
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1 MS. JANETTE BENHAM: Good morning. My name is
2 Janette Benham, and I'm the Rules Coordinator for the Leave
3 and Care Division of the Washington State Employment
4 Security Department. Thank you, everyone, for joining us
5 today for this rulemaking hearing. I'd like to discuss a
6 few housekeeping items before we begin the hearing.
7 Just a reminder that this meeting concerns proposed
8 regulations regarding the Paid Family and Medical Leave
9 program. This meeting will not feature discussion of any
10 specific application and attendance is completely optional.
11 If you have questions regarding your own application or
12 weekly claim for Paid Family and Medical Leave, or if you
13 have other general questions, please call our customer care
14 team at 833-717-2273. Again, that was 833-717-2273. We
15 won't be able to answer any questions during this meeting.
16 Today's hearing is regarding the rule proposal that
17 revises sections of Washington Administrative Code
18 regarding the required waiting period and submitting
19 petitions for review. If you would like to provide written
20 comments related to these rules, you may do so by e-mail at
21 rules@esd.wa.gov. Again, that was rules, r-u-l-e-s,
22 @esd.wa.gov. We'll continue to accept written comments
23 through the close of business today.
24 To view the electronic version of the proposed rules,
25 you can go to the paidleave, all one word,

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1 wa.gov/rulemaking. Again, all one word. That was
2 paidleave, p-a-i-d-l-e-a-v-e dot w-a dot g-o-v/rulemaking,
3 r-u-l-e-m-a-k-i-n-g. Under the current rulemaking heading,
4 the proposed rules are under the first topic titled Waiting
5 Period and Other Topics. Click on the plus sign next to
6 the rules to expand the topics. Rules for today's hearing
7 are listed after the Proposed Rules title.
8 Before we begin, are there any questions about the
9 purpose of today's meeting or where to find the proposed
10 rules? Remember, you can unmute yourselves using your
11 Teams window or by hitting star 6 if you're joining by
12 phone. And I'll pause for just a second for people to
13 unmute if you have questions.
14 MS. ROSE GUNDERSEN: Thank you. I have -- this
15 is Rose Gundersen from Washington Retail. So is it CR 102
16 that is being discussed today?
17 MS. JANETTE BENHAM: Yes. The CR 102 is the
18 filing document that's filed with the code revisor. Right
19 after CR 102 there is Proposed Rules, and if you click on
20 each of those proposed rules topics, it will bring up the
21 proposed rules that we'll be going through during the
22 hearing today.
23 MS. ROSE GUNDERSEN: Yeah. It would -- I'm not
24 sure who I'm talking with right now. Sorry.
25 MS. JANETTE BENHAM: This is Janette Benham.

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1 I'm the Rules Coordinator for the Leave and Care Division.
2 MS. ROSE GUNDERSEN: Yeah. It would have been
3 nice -- in the e-mail invitation that was sent, it didn't
4 really specify what rules are going to be reviewed. It
5 just tell us to go to the Rules page, and then, you know,
6 there are multiple items on that page, and I was
7 wondering -- yeah, I mean, you have it in the email. Okay.
8 Never mind, I --
9 MS. JANETTE BENHAM: Are you able to find the
10 Rules page?
11 MS. ROSE GUNDERSEN: Yeah. Yeah. Thank you.
12 MS. JANETTE BENHAM: Sure.
13 Are there any other questions or does anyone need me
14 to repeat how to find the Proposed Rules we'll be
15 discussing today?
16 (No response)
17 MS. JANETTE BENHAM: Okay. So we'll go ahead
18 and start the hearing. Pursuant to the authority given
19 under Washington State Law RCW 50A.05.060, Chapter 42.30
20 RCW of the Open Public Meetings Act, and Chapter 34.05 of
21 the Administrative Procedure Act, this hearing is hereby
22 convened.
23 For the record, this hearing is beginning at 9:05
24 a.m. on April 5, 2022, online and by conference call. This
25 hearing is convened to consider testimony concerning Paid

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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
 12 Washington State Employment Security Department.
 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. APRIL 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.

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1 MS. JANETTE BENHAM: Thank you, April.
 2 We will now hear testimony from those in attendance.
 3 I'll go through each rule individually, outline the
 4 proposed amendments to each rule again, and accept comment
 5 on each rule.
 6 All attendees are currently muted. If you wish to
 7 speak, you can unmute yourselves through your Teams window
 8 or by pressing star 6 if you're joining by phone. When you
 9 testify, please speak clearly, state your name, spell your
 10 last name, and state who you represent if you are here in a
 11 representative capacity.
 12 When you finish testifying, please remember to mute
 13 yourself through your Teams window or hit star 6 again on
 14 your phone.
 15 The first rule we'll accept comment on is WAC
 16 192-500-185, Waiting Period. Proposed amendments to this
 17 rule clarify that the waiting period does not reduce the
 18 maximum duration of an employee's available paid family or
 19 medical leave and that the waiting period does not apply to
 20 medical leave taken upon the birth of a child.
 21 We are now ready to accept public comment for WAC
 22 192-500-185, Waiting Period, from those in attendance. And
 23 I will go ahead and invite individuals to unmute themselves
 24 and provide any comments that you have on this rules
 25 proposal.

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1 MS. APRIL AMUNDSON: Abigail O'Connell has her
2 hand up.
3 MS. JANETTE BENHAM: Go ahead, Abigail.
4 MS. ABIGAIL O'CONNELL: Hi. My name is
5 Abigail O'Connell. Can you hear me?
6 MS. APRIL AMUNDSON: We can hear you.
7 MS. ABIGAIL O'CONNELL: Okay, great. My last
8 name is spelled O-apostrophe-C-O-N-N-E-L-L, and I'm senior
9 counsel for Sun Life. And I guess I would just ask -- I
10 know there's been solvency issues -- whether the removal of
11 the waiting week for medical leave was rated for, meaning
12 like was the financial impact of that on the program
13 evaluated and considered?
14 MS. JANETTE BENHAM: I wanted to reiterate the
15 part about we won't be able to answer questions. So if you
16 could rephrase that into a comment for the rules hearing,
17 that would be fantastic.
18 MS. ABIGAIL O'CONNELL: Okay. I guess my
19 comment would be I hope that the consideration for solvency
20 of the overall program occurred in the suggestion to strike
21 the waiting period for medical leave due to birth.
22 MS. JANETTE BENHAM: Thank you, Abigail.
23 MS. MARILYN WATKINS: This is Marilyn Watkins
24 with the Economic Opportunity Institute. My last name is
25 spelled W-A-T-K-I-N-S. I'm also a member of the Paid

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1 Family Medical Leave Advisory Committee. And I would like
2 to offer support for these amendments as fully in keeping
3 with the legislative intent both of the original
4 legislation and of the legislation passed this most recent
5 legislative session. Thank you.
6 MS. JANETTE BENHAM: Thank you, Marilyn.
7 Is there anyone else who would like to provide
8 comment on WAC 192-500-185?
9 MS. CAROLYN CALDERON: Hi, there. This is
10 Carolyn Calderon. My last name is spelled C-A-L-D-E-R-O-N.
11 I'm calling from Ste. Michelle Wine Estates, and a question
12 about or a comment about the waiting period. I'm -- I'm --
13 I would like consideration to be added that maybe a phrase
14 go in there in regards to intermittent leave and the impact
15 of that in regards to the waiting period just for clarity,
16 to kind of put everything all in one place in regards to
17 waiting period. That's it.
18 MS. JANETTE BENHAM: Thank you, Carolyn.
19 Anyone else who has comments on WAC 192-500-185?
20 MS. APRIL AMUNDSON: I want to confirm that
21 Abigail O'Connell didn't have any other comments. The hand
22 was still raised. I did lower it, but I wanted to confirm
23 whether or not you had more comment to provide.
24 MS. ABIGAIL O'CONNELL: Confirmed. No further
25 comments, thank you.

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1 MS. JANETTE BENHAM: If there are no other
2 comments on this rule, we'll move to the next rule.
3 The next rule we'll accept comment on is WAC
4 192-620-035, When will a weekly amount be prorated?
5 Proposed amendments to this rule clarify that
6 proration of benefits does not apply to the waiting period.
7 Additional proposed amendments have been made to align the
8 rules language with the numbering format required by the
9 Office of the Code Revisor.
10 We are now ready to accept public comments for WAC
11 192-620-035, When will a weekly benefit amount be prorated?
12 from those in attendance. I will give everyone the
13 opportunity to unmute themselves and provide any comments
14 on this proposed rule.
15 MS. MARILYN WATKINS: Hi, this is Marilyn
16 Watkins from the Economic Opportunity Institute. Again,
17 that's W-A-T-K-I-N-S. And I'd like to offer support for
18 the amendment that is made in section 3, that the waiting
19 week -- that the section doesn't apply to the waiting
20 period. However, I would also want to reiterate the
21 concerns with the proration for somebody's potentially
22 final week of leave that's provided here as inconsistent
23 with the plain language of the statute and not fairly
24 representing people's actual amount of leave and benefits
25 to which they're entitled in that final week of their claim

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1 and would again reiterate the objections that were made
2 during the rules last -- rule hearing last summer on those
3 same final sections of the -- of this part. Thank you.
4 MS. JANETTE BENHAM: Thank you, Marilyn.
5 Are there any other comments on WAC 192-620-035?
6 (No response.)
7 MS. JANETTE BENHAM: Hearing none, I would go
8 ahead and move to the next rule. The next rule we'll
9 accept comment on is WAC 192-620-040, How will the
10 Department determine the number of hours of paid family or
11 medical leave an employee claims each week?
12 Proposed amendments to the rule clarify that the
13 calculation of typical work week hours does not apply to
14 the waiting period.
15 We're now ready to accept public comment for WAC
16 192-620-040, How will the Department determine the number
17 of hours of paid family or medical leave an employee claims
18 each week?
19 And I'll pause here and we'll go ahead and accept
20 comments. If individuals would like to unmute themselves
21 or press star 6 if they're calling in by phone.
22 (No comment.)
23 MS. JANETTE BENHAM: Is there anyone on the
24 comment that would like to provide comment on the WAC
25 192-620-040?

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1 MS. ROSE GUNDERSEN: This is Ms. Gundersen with
2 Washington Retail with concerns about partial -- what if a
3 week has -- what if the waiting period applies to part of
4 the week? Do you also not apply this WAC to that week when
5 part of it is applicable to the waiting period.
6 MS. JANETTE BENHAM: Rose, if you could please
7 restate your question as a comment for the rules hearing,
8 that would be great.
9 MS. ROSE GUNDERSEN: Okay. I will make it more
10 clear. What if the week you are talking about also is -- a
11 part of the week is the waiting period? Does this WAC not
12 apply to that whole week if only part of the week is --
13 applies to the waiting period?
14 MS. JANETTE BENHAM: So we're not able to
15 actually answer the questions during the rules hearing, so
16 if you would like to restate your question just as a
17 comment, if you could please do that, that would be great.
18 MS. ROSE GUNDERSEN: Okay. Why don't I think
19 about it, and I'll put it in the Chat.
20 MS. JANETTE BENHAM: Actually, the Chat is
21 disabled, but we are accepting written comments through the
22 close of business today, and if you want to provide a
23 written comment, you can e-mail that to us at
24 rules@esd.wa.gov, if that would be helpful for you.
25 MS. ROSE GUNDERSEN: Sure.

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1 MS. JANETTE BENHAM: Thank you.
2 MS. ROSE GUNDERSEN: I haven't had time to
3 really prepare for this, so I apologize.
4 MS. JANETTE BENHAM: That's okay. We are happy
5 to accept comments at that rules@esd.wa.gov e-mail address
6 through the close of business today.
7 Is there anyone else who would like to provide
8 comment on WAC 192-620-040?
9 (No response)
10 MS. JANETTE BENHAM: Okay, we'll go ahead and
11 move on to the final rule for today's hearing. The last
12 rule we'll accept comment on for today's hearing is WAC
13 192-800-125, When is a petition for review considered
14 delivered to the department? Proposed amendments to the
15 rule add the ability for individuals to e-mail petitions
16 for review to the Commissioner's Review Office and add the
17 e-mail address where those petitions may be sent.
18 So we're now ready to accept public comment for WAC
19 192-800-125, When is a petition for review considered
20 delivered to the department?
21 I'll pause here and provide an opportunity for
22 individuals to unmute themselves or press star 6 if you're
23 calling in by phone and give individuals the opportunity to
24 provide comment.
25 (No response)

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1 MS. JANETTE BENHAM: Okay, it doesn't sound like
2 we have anyone who would like to provide comment on WAC
3 192-800-125, When is a petition for review considered
4 delivered to the department?
5 So I want to take a moment and ask if there is any
6 additional testimony on any of the proposed rules included
7 in today's hearing. If there is any additional testimony,
8 please feel free to provide comment and indicate which rule
9 you're providing comment on. I'll pause here for just a
10 minute and give individuals the opportunity to comment on
11 any of the rules that we have discussed here at today's
12 rules hearing.
13 MS. APRIL AMUNDSON: Gina Rutledge, it looks
14 like you have your hand up.
15 MS. JANETTE BENHAM: We're not able to hear you.
16 You might be on mute. If you could unmute yourself and
17 provide comment, that would be great.
18 MS. GINA RUTLEDGE: Great. Hello. Gina
19 Rutledge, G-I-N-A, last name Rutledge, R-U-T-L-E-D-G-E,
20 representing our customers at MetLife, the voluntary plans
21 as well as a lot of customers who use this as the state
22 plan.
23 In the waiting period, by waiving that waiting period
24 for pregnancy/childbirth issues, can we ask you also to put
25 in how sick leave would be included if that person may be

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1 receiving sick leave which is normally used during that
2 waiting week? So thank you. So how are we coordinating
3 benefits?
4 MS. JANETTE BENHAM: I just want to clarify that
5 your question is considering adding sick leave into how
6 benefits are coordinated during that waiting week.
7 MS. GINA RUTLEDGE: Right, an example, because
8 now you're waiving that, so people are used to, after two
9 years with the program, they're used to using the state
10 sick leave in that first week, especially if they're not
11 sure if it's a long-term absence or if it's just going to
12 be a short-lived serious health condition. So it's of
13 value to add that information into your -- into this
14 section since you're waiving that waiting period for a
15 specific qualifying event.
16 MS. JANETTE BENHAM: Great. Thank you for your
17 comment, Gina.
18 Is there any further testimony from anyone on the
19 phone or on the Teams platform before I conclude this
20 hearing?
21 (No response)
22 MS. JANETTE BENHAM: Okay. In conclusion, this
23 hearing was convened to consider testimony on Paid Family
24 and Medical Leave rulemaking.
25 All oral testimony presented at this hearing and

1 written submissions will become part of the official
2 record.

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

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

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

14 **This hearing is adjourned at 9:27 a.m. on April 5,**
15 **2022.**

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

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

21 (Concluded at 9:27 a.m.)

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C E R T I F I C A T E

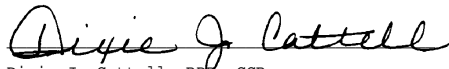
1 I, DIXIE J. CATTELL, the undersigned Registered
2 Professional Reporter and Washington Certified Court Reporter,
3 do hereby certify:

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set my hand this
16 13TH day of APRIL, 2022.

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19 Dixie J. Cattell, RPR, CCR

20 NCRA Registered Professional Reporter

21 Washington Certified Court Reporter CSR#2346

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