MEETING VIA MICROSOFT TEAMS
RE: PAID FAMILY AND MEDICAL LEAVE RULE-MAKING HEARING
Tuesday, July 26, 2022
Olympia, Washington

APPEARANCES:

PRESIDING:               JASON BARRETT
                         Lead Policy Analyst
                         Leave & Care Division

ALSO PRESENT:             JANETTE BENHAM
                         Rules Coordinator
                         Leave & Care Division
MEETING VIA MICROSOFT TEAMS
RE: PAID FAMILY AND MEDICAL LEAVE RULE-MAKING HEARING
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BE IT REMEMBERED that on Tuesday, July 26, 2022, at 9:02 a.m. via Microsoft Teams, before DIXIE J. CATTELL, Certified Court Reporter, the following proceedings were had, to wit:

MR. JASON BARRETT: Good morning, everyone. My name is Jason Barrett. I'm the Lead Policy Analyst for the Leave and Care Division of the Washington State Employment Security Department. Thank you very much for joining us today for this rule-making hearing. I'd like to discuss a few housekeeping items before we begin.

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 benefits or if you have general questions, please call our customer care team at 833-717-2273. That's 833-717-2273. We will not 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 implementation of Senate Bill 5649. 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's rules@esd.wa.gov. We will continue to accept written comments through the close of business today.

To view the electronic version of the proposed rules, you can go to paidleave.wa.gov/rulemaking. Under the current rulemaking heading, the proposed rules are under the first topic, I'm sorry, the second topic titled Implementation of Second Substitute Senate Bill 5849."

Click on the plus sign next to the rules will expand the topics and the 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? You can unmute yourselves using your Teams window or by hitting *6 if you're joining by phone. Are there any questions before we begin?

(No response)

MR. JASON BARRETT: All right. Hearing none, we will 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 9:03 a.m. on July 26, 2022, online and by conference call.

This hearing is convened to consider testimony
concerning Paid Family and Medical Leave rulemaking. At a high level this rulemaking amends existing rules to comply with new requirements imposed by the passage of Senate Bill 5649 in this year's legislative session.

Notice of this hearing was filed and published in the Washington State Register on June 22, 2022, at WSR number 22-13-176, was sent to interested parties, and was posted on the Department's webpage.

My name is Jason Barrett. I'm the Lead Policy Analyst for the Leave and Care Division of Washington State Employment Security Department.

I represent Commissioner Cami Feek as the hearing officer presiding at this public rulemaking hearing.

There is another member of the Leave and Care Policy Team attending this hearing. I will ask her to please introduce herself by name and title.

MS. JANETTE BENHAM: Good morning. I'm Janette Benham and I'm the Rules Coordinator for the Leave and Care Division at the Employment Security Department.

MR. JASON BARRETT: Thank you, Janette.

Pleased be advised that this hearing is being transcribed by a court reporter and is also being recorded by the Microsoft Teams platform. The transcript and recording will become part of the official rulemaking file. To facilitate this transcription, please state and then
spell your name before your testimony. If you are here in
a representative capacity, please include who you are
providing testimony on behalf of.

Please also note that this hearing is convened to
consider comments on the proposed rules. Because of the
formal nature of this hearing, we are unlikely to answer
any questions you may ask. If you do pose a question, I
will ask you to rephrase your question as a comment.
Questions can be e-mailed to us at paidleave@esd.wa.gov
where a customer support staff will respond to your
question. Written comments on the proposed rules will be
accepted through today by e-mail at rules@esd.wa.gov.

A Concise Explanatory Statement for the agency's
reasons for adoption of the rules, including a summary and
response to all comments received after the publication of
the proposed rules will be placed in the permanent
rulemaking file and posted online. This document will be
sent to all interested parties who have signed up to
receive Paid Family and Medical Leave rules e-mails.

We will begin with Janette Benham who will provide a
brief explanation of the proposal.

MS. JANETTE BENHAM: Thank you, Jay.

Earlier this year the Washington state legislature
voted to pass Senate Bill 5649. The governor signed the
bill on March 30 and the bill went into effect on June 9.
The proposed rule amendments we're discussing today are necessary to implement sections of the bill which, among other provisions, contains a sunset to the collective bargaining agreement exemption, creates a new qualifying event, and specifies the default leave type after an employee gives birth.

I encourage you all to read the text of the bill and the rules along with the supporting documents for a more robust understanding.

Thank you all for your interest and participation in our rulemaking efforts, and we look forward to hearing your comments today.

MR. JASON BARRETT: Thank you, Janette.

We will now hear testimony from those in attendance. I'll go through each rule individually, outline the proposed amendments to each rule once again, and accept comment on each rule.

All attendees are currently muted. If you wish to speak, you can unmute yourselves through your Teams window or by pressing *6 if you are joining by phone.

When you testify, please speak clearly, state your name, spell your last name, and state who you represent if you are here in a representative capacity.

When you finish testifying, please mute yourself through your Teams window or hit *6 again on your phone.
The first rule we'll accept comment on is WAC 192-520-010, Parties to collective bargaining agreements. This rule implements the sunset date of the CBA exemption as required by Senate Bill.

We are now ready to accept public comment for WAC 192-520-010, Parties to collective bargaining agreements. Are there any comments on the proposed rule?

(No response).

MR. JASON BARRETT: Hearing none, the next rule that we will accept comment on --

MS. JANETTE BENHAM: Jason. Jason, sorry, we had someone who had their hand raised.

MR. JASON BARRETT: Oh, I'm so sorry.

MS. JANETTE BENHAM: That's okay.

MR. JASON BARRETT: Thank you.

MS. JANETTE BENHAM: Jacob Kierstead.

Go ahead, Jacob.

MR. JACOB KIERSTEAD: Yeah. No, I like the clarity of the rule, that it is sunsetting. Just as a future endeavor, this actually complicated the roll-out for when Washington Paid Family Leave became live. This made it really difficult for the employer that I worked for just in general and also the members, because it wasn't time to negotiate bargaining agreements. In the future I would just think that any such delay based on something like
this, it's really difficult for employers, unions and
members to try to figure out. I think the language to
begin with was not fantastic.

MR. JASON BARRETT: Thank you for that comment.
Are there any other comments on WAC 192-050-010, Parties to
collective bargaining agreements?

(No response)

MR. JASON BARRETT: Hearing none, the next rule
that we will accept comment on is WAC 192-610-025, Birth,
placement, or death of a child and required documentation.
I would like to give fair warning that this rule
includes references to topics that may be distressing or
unsettling to those in attendance. Senate Bill 5649
created a new qualifying event for family leave benefits in
the event of the death of a child. If discussion of this
topic is too unsettling for any of our attendees, I would
encourage them to leave the call at this time. Thank you.

Proposed amendments to this rule specifies
requirements pertaining to leave taken for the death of a
child. The rule also implements the postnatal leave period
and specifies that leave taken during such time will
default to medical leave.

We are now ready to accept public comment for WAC
192-610-025, Birth, placement, or death of a child and
required documentation from those in attendance.
Patricia, I see your hand is raised.

MS. PATRICIA ZUNIGA: Yes. Hello, good morning, Jason and Janet, and all members on this call.

My comment has to do with subsection --

MR. JASON BARRETT: Patricia, I'm so sorry to interrupt. Would you mind just spelling your last name for our court reporter.

MS. PATRICIA ZUNIGA: Sure thing. My last name is Zuniga, Z-U-N-I-G-A. And I apologize, I forgot to say that I am here in a representative capacity for Lincoln Financial Group.

MR. JASON BARRETT: Thank you very much.

MS. PATRICIA ZUNIGA: So my comment has to do with subsection C, Documentation sufficient to verify or substantiate the child's birth or death. My comment was going to be if the Department would consider adding a provision to clarify sufficient documentation and consider adding an additional statement that's similar to FMLA. The citation is 29 CFR 825.122(k), stating that this documentation may take the form of a simple statement from the employee, and the reason for this is to enable employees who are filing for this compassionate care leave to have a easier time providing documentation to support this qualifying leave reason.

That is all. Thank you.
MR. JASON BARRETT: Thank you very much for your comment.

Are there any other comments on the proposed amendment to WAC 192-610-025?

(No response).

MR. JASON BARRETT: I want to take a moment and ask if there are any additional comments or testimony on any of the proposed rules included in today's hearing. Short hearing today, just the two rules.

If there is additional testimony, please feel free to provide comment and indicate which rule you're providing comment on. We're going to just keep the floor open for a moment here. If there any additional comments on either of the two rules, you are free to offer that comment at this time.

(No response).

MR. JASON BARRETT: The floor is currently open for any comments that may be offered on either of today's rules. If you would like to comment on either rule, you are free to do so at this time. We'll leave the floor open for just another moment or two.

(Pause in proceedings).

MS. JANETTE BENHAM: Jason, it looks like Jacob Kierstead has his hand up again.

Jason, if you could please spell your name and state
for the stenographer if you're here in a representative capacity, that would be great. Thank you.

MR. JACOB KIERSTEAD: You bet.

My name is Jacob Kierstead, K-I-E-R-S-T-E-A-D, and I'm not representing anybody, just on my behalf.

The -- in the proposed rule for birth or placement of a child, it may be something to consider that after six -- let's see here -- six subject to maximum weekly benefits, you know, the seven calendar days for death or delivery of the deceased child, the employee may be subject to taking further leave beyond that if, for their own grief reaction condition, that might be something to spell out, you know, that they may be eligible for more time under their own treatment, just purely as a -- such a horrendous situation that otherwise, you know, arises.

In my own profession I have dealt with that sort of situation and, you know, expecting parent otherwise has a pretty strong grief reaction and ends up following up with a therapist for their own condition due to, you know, Adjustment Disorder or, you know, PTSD or something along those lines.

Thank you.

MR. JASON BARRETT: Thank you, Jacob.

Is there any further testimony from anyone joining us this morning on the proposed rules?
MR. JASON BARRETT: I'll do one final call. Is there any further testimony from anyone joining this morning on the proposed rules before I conclude the hearing?

(No response).

MR. JASON BARRETT: Hearing none, in conclusion, this hearing was convened to consider testimony on Paid Family and Medical Leave rulemaking. All oral testimony presented at this hearing and written submissions will become part of the official record.

The deadline for submission of written comments is today, July 26, 2022. You may submit written comments by e-mailing rules@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 August 1st, 2022.

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

This hearing is adjourned at 9:21 a.m. on July 26, 2022.

Thank you for coming.

(Adjourned at 9:21 a.m.)
CERTIFICATE

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

That the foregoing PAID FAMILY AND MEDICAL LEAVE RULE-MAKING HEARING was taken before me and completed on the 26TH day of July, 2022, and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of the hearing;

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 sending via email the transcript of the PAID FAMILY AND MEDICAL LEAVE RULE-MAKING HEARING to JASON BARRETT.

IN WITNESS HEREOF, I have hereunto set my hand this 30th day of JULY, 2022.

Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346
| 7:8 8:7 10:5,16 12:1,6          | 25:5:23 6:21,22 10:25  |
| rewrites 2:22                   | statement 5:13 9:18,  |
| robust 6:9                      | 20                   |
| roll-out 7:20                   | stating 9:19         |
| rule 2:21 6:1,15,16,17          | stenographer 11:1    |
| 7:1,3,7,9,19 8:8,11,18,20      | strong 11:18         |
| 10:11,19 11:6                   | subject 11:8,10      |
| rule-making 2:10                | submission 12:12     |
| rulemaking 3:5 4:1,2,13,24 5:17| submissions 12:10    |
| 6:11 12:9                       | submit 12:13         |
| rules 2:25 3:3,5,8,9,10,13,19  | subsection 9:4,14    |
| 4:2,18 5:5,11,14,16,19 6:8     | substantiate 9:15    |
| 10:8,9,14,19 11:25 12:4,17     | Substitute 3:7       |
| rules@esd.wa.gov.               | sufficient 9:14,17   |
| rulmaking 12:15                 | sunset 6:3 7:3       |
| sections 2:22 6:2               | sunsetting 7:19      |
| Senate 2:23 3:7 4:3 5:24 7:4 8:13 | support 5:10 9:23 |
| session 4:4                     | supporting 6:8       |
| Short 10:9                      | taking 11:10         |
| sign 3:8                        | team 2:19 4:15       |
| signed 5:18,24                  | Teams 2:2 3:13 4:23 |
| similar 9:18                    | 6:19,25              |
| simple 9:20                     | testify 6:21         |
| situation 11:14,17              | testifying 6:24      |
| sort 11:16                      | testimony 3:25 5:1,3 |
| speak 6:19,21                   | 6:14 10:7,10 11:24  |
| specific 2:15                   | 12:3,8,9,17          |
| specifies 6:5 8:18,21           | text 6:7             |
| spell 5:1 6:22 10:25 11:12     | therapist 11:19      |
| spelling 9:6                    | thing 9:8            |
| staff 5:10                      | time 7:23 8:17,21 9:23 |
| start 3:18                      | 10:15,20 11:13       |
| state 2:8 3:20 4:6,10,9,11,12  | title 3:10 4:16      |
| today's 2:21 3:9,12 10:8,18    | titled 3:6           |
| topic 3:6 8:16                  | today 2:10 3:2 5:12  |
| topics 3:9 8:12                 | 6:1,12 10:9 12:13    |
| transcribed 4:22                | today's 2:21 3:9,12  |
| transcript 4:23                 | 10:8,18              |
| transcription 4:25              | treatment 11:14      |
| understanding 6:9               | Tuesday 2:1          |
| unions 8:1                      | type 6:5             |
| unsettling 8:13,16              | Zuniga 9:2,8,9,13    |
| verify 9:14                     | Y                    |
| version 3:3                     | year 5:23            |
| view 3:3                        | year's 4:4           |
| voted 5:24                      | Z                    |
| WAC 7:1,5 8:5,9,23              | U                    |
| warning 8:11                    | understanding 6:9    |
| Washington 2:8,22               | unions 8:1           |
| 3:19 4:6,10 5:23 7:21          | unmute 3:13 6:19     |
| webpage 4:8                     | unsettling 8:13,16   |
| weekly 2:17 11:8                | verifying 9:14       |
| window 3:13 6:19,25             | version 3:3          |
| wit 2:4                         | view 3:3             |
| worked 7:22                     | voted 5:24           |
| written 2:24 3:2                | W                    |
| 12:10,12,13,17                 | WSR 4:6              |
| Writtens 5:11                   |                       |

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