
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

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1 BE IT REMEMBERED that on Tuesday, July 26, 2022,
2 at 9:02 a.m. via Microsoft Teams, before DIXIE J. CATTELL,
3 Certified Court Reporter, the following proceedings were
4 had, to wit:

5
6 MR. JASON BARRETT: Good morning, everyone. My
7 name is Jason Barrett. I'm the Lead Policy Analyst for the
8 Leave and Care Division of the Washington State Employment
9 Security Department. Thank you very much for joining us
10 today for this rule-making hearing. I'd like to discuss a
11 few housekeeping items before we begin.

12 Just a reminder that this meeting concerns proposed
13 regulations regarding the paid Family and Medical Leave
14 program. This meeting will not feature discussion of any
15 specific application and attendance is completely optional.
16 If you have questions regarding your own application or
17 weekly claim for paid Family and Medical Leave benefits or
18 if you have general questions, please call our customer
19 care team at 833-717-2273. That's 833-717-2273. We will
20 not be able to answer any questions during this meeting.

21 Today's hearing is regarding the rule proposal that
22 revises sections of Washington Administrative Code
23 regarding the implementation of Senate Bill 5649. If you
24 would like to provide written comments related to these
25 rules, you may do so by e-mail at rules@esd.wa.gov. Again,

1 that's rules@esd.wa.gov. We will continue to accept
2 written comments through the close of business today.

3 To view the electronic version of the proposed rules,
4 you can go to paidleave.wa.gov/rulemaking. Under the
5 current rulemaking heading, the proposed rules are under
6 the first topic, I'm sorry, the second topic titled
7 Implementation of Second Substitute Senate Bill 5849."
8 Click on the plus sign next to the rules will expand the
9 topics and the rules for today's hearing are listed after
10 the "Proposed rules" title.

11 Before we begin, are there any questions about the
12 purpose of today's meeting or where to find the proposed
13 rules? You can unmute yourselves using your Teams window
14 or by hitting *6 if you're joining by phone. Are there any
15 questions before we begin?

16 (No response)

17 MR. JASON BARRETT: All right. Hearing none, we
18 will go ahead and start the hearing.

19 Pursuant to the authority given under Washington
20 State law RCW 50A.05.060, Chapter 42.30 RCW of the Open
21 Public Meetings Act and Chapter 34.05 of the Administrative
22 Procedure Act, this hearing is hereby convened.

23 For the record this hearing is beginning at 9:03 a.m.
24 on July 26, 2022, online and by conference call.

25 This hearing is convened to consider testimony

1 concerning Paid Family and Medical Leave rulemaking. At a
2 high level this rulemaking amends existing rules to comply
3 with new requirements imposed by the passage of Senate Bill
4 5649 in this year's legislative session.

5 Notice of this hearing was filed and published in the
6 Washington State Register on June 22, 2022, at WSR number
7 22-13-176, was sent to interested parties, and was posted
8 on the Department's webpage.

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

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

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

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

20 MR. JASON BARRETT: Thank you, Janette.

21 Pleased be advised that this hearing is being
22 transcribed by a court reporter and is also being recorded
23 by the Microsoft Teams platform. The transcript and
24 recording will become part of the official rulemaking file.
25 To facilitate this transcription, please state and then

1 spell your name before your testimony. If you are here in
2 a representative capacity, please include who you are
3 providing testimony on behalf of.

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

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

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

22 MS. JANETTE BENHAM: Thank you, Jay.

23 Earlier this year the Washington state legislature
24 voted to pass Senate Bill 5649. The governor signed the
25 bill on March 30 and the bill went into effect on June 9.

1 The proposed rule amendments we're discussing today are
2 necessary to implement sections of the bill which, among
3 other provisions, contains a sunset to the collective
4 bargaining agreement exemption, creates a new qualifying
5 event, and specifies the default leave type after an
6 employee gives birth.

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

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

13 MR. JASON BARRETT: Thank you, Janette.

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

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

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

24 When you finish testifying, please mute yourself
25 through your Teams window or hit *6 again on your phone.

1 The first rule we'll accept comment on is WAC
2 192-520-010, Parties to collective bargaining agreements.
3 This rule implements the sunset date of the CBA exemption
4 as required by Senate Bill .

5 We are now ready to accept public comment for WAC
6 192-520-010, Parties to collective bargaining agreements.
7 Are there any comments on the proposed rule?

8 (No response).

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

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

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

14 MS. JANETTE BENHAM: That's okay.

15 MR. JASON BARRETT: Thank you.

16 MS. JANETTE BENHAM: Jacob Kierstead.

17 Go ahead, Jacob.

18 MR. JACOB KIERSTEAD: Yeah. No, I like the
19 clarity of the rule, that it is sunsetting. Just as a
20 future endeavor, this actually complicated the roll-out for
21 when Washington Paid Family Leave became live. This made
22 it really difficult for the employer that I worked for just
23 in general and also the members, because it wasn't time to
24 negotiate bargaining agreements. In the future I would
25 just think that any such delay based on something like

1 this, it's really difficult for employers, unions and
2 members to try to figure out. I think the language to
3 begin with was not fantastic.

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

7 (No response)

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

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

23 We are now ready to accept public comment for WAC
24 192-610-025, Birth, placement, or death of a child and
25 required documentation from those in attendance.

1 Patricia, I see your hand is raised.

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

4 My comment has to do with subsection --

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

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

12 MR. JASON BARRETT: Thank you very much.

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

25 That is all. Thank you.

1 MR. JASON BARRETT: Thank you very much for your
2 comment.

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

5 (No response).

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

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

16 (No response).

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

22 (Pause in proceedings).

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

25 Jason, if you could please spell your name and state

1 for the stenographer if you're here in a representative
2 capacity, that would be great. Thank you.

3 MR. JACOB KIERSTEAD: You bet.

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

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

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

22 Thank you.

23 MR. JASON BARRETT: Thank you, Jacob.

24 Is there any further testimony from anyone joining us
25 this morning on the proposed rules?

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(No response)

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 rulmaking.

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.)

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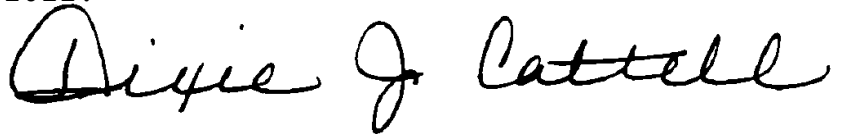
I, DIXIE J. CATTELL, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, do hereby certify:

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

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