

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT  
BEFORE THE RULES COORDINATOR  
LEAVE AND CARE DIVISION

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VERBATIM RECORD OF PROCEEDINGS  
PROPOSED REGULATIONS RE PAID FAMILY & MEDICAL LEAVE PROGRAM  
Tuesday, May 9, 2023  
Olympia, Washington

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APPEARANCES:

PRESIDING OFFICER:                   JANETTE BENHAM  
  Rules Coordinator

ALSO PRESENT:                         JASON BARRETT  
  BRETT CAIN



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 at the Washington State Employment  
4 Security Department. Thank you all for joining us today  
5 for this rulemaking hearing, and I'd like to discuss a few  
6 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 general questions, please call our Customer Care team  
14 at 833-717-2273. We won't be able to answer any questions  
15 during this hearing.

16 Today's hearing is regarding the rule proposal that  
17 revises sections of Washington Administrative Code  
18 regarding the definition of placement, elective coverage,  
19 employer reporting requirements and designated  
20 representatives. If you would like to provide written  
21 comments related to these rules, you may do so by e-mail at  
22 rules, R-U-L-E-S, @esd.wa.gov. We'll continue to accept  
23 written comments through the close of business today.

24 To view the electronic version of the proposed rules,  
25 you can go to paidleave, all one word, .wa.gov/rulemaking,

1 again all one word. That's [paidleave.wa.gov/rulemaking](https://paidleave.wa.gov/rulemaking).  
2 The proposed rules are under the current rulemaking  
3 heading. And if you click on the plus sign next to the  
4 rules, it expands the topic. The rules for today's hearing  
5 are listed after the "CR-102: Proposed Rules" title. We'll  
6 go through the proposed rules in the order they appear on  
7 the website.

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 \*6 if you're joining by phone.  
12 If you're not providing testimony, please remember to keep  
13 yourself muted throughout the hearing. And if you're  
14 calling in for the hearing, please do not place this  
15 meeting on hold to take another call. The hearing cannot  
16 proceed if there is hold music or messages played while the  
17 call is on hold. Does anyone have any questions?

18 (No response)

19 MS. JANETTE BENHAM: Okay, we'll go ahead and  
20 start the hearing.

21 I just want to check. Dixie, are you ready to  
22 proceed?

23 THE COURT REPORTER: Yes.

24 MS. JANETTE BENHAM: Great. Thank you.

25 Pursuant to the authority given under Washington

1 State Law RCW 50A.05.060, RCW 50A.10.010, Chapter 42.30 RCW  
2 of the Open Public Meetings Act and Chapter 34.05 RCW of  
3 the Administrative Procedure Act, this hearing is hereby  
4 convened.

5 For the record this hearing is beginning at 9:04 a.m.  
6 on May 9, 2023, online and by conference call.

7 This hearing is convened to consider testimony  
8 concerning Paid Family and Medical Leave rulemaking.

9 Notice of this hearing was filed and published in the  
10 Washington State Register on April 4, 2023, as WSR number  
11 23-08-075, was sent to interested parties and was posted on  
12 the department's webpage.

13 My name is Janette Benham, and I'm the rules  
14 coordinator for the Leave and Care Division of the  
15 Washington State Employment Security Department. I  
16 represent Commissioner Cami Feek as the hearing officer  
17 presiding at this public rulemaking hearing.

18 There are other members of the Leave and Care Policy  
19 Team attending this hearing. Please introduce yourselves  
20 by name and title.

21 MR. JASON BARRETT: Morning. My name is Jason  
22 Barrett. I'm the lead policy analyst for the program.

23 MR. BRETT CAIN: Good morning. My name is Brett  
24 Cain, and I'm a policy analyst for the Rules and Policy  
25 Team.

1 MS. JANETTE BENHAM: Thank you, Brett and Jason.  
2 Please be advised that this hearing is being transcribed by  
3 a court reporter and is also being recorded by the  
4 Microsoft Teams platform. The transcript and recording  
5 will become a part of the official rulemaking file. To  
6 facilitate this transcription, please state and then spell  
7 your name before your testimony. If you are here in a  
8 representative capacity, please include who you are  
9 providing testimony on behalf of.

10 Please also note that this hearing is convened to  
11 consider comments on the proposed rules. Because of the  
12 formal nature of this hearing, we are unlikely to answer  
13 any questions you may ask. If you do pose a question, I  
14 will ask you to rephrase your question as a comment.  
15 Questions can be e-mailed to us at [paidleave@esd.wa.gov](mailto:paidleave@esd.wa.gov),  
16 where our customer support staff will respond to your  
17 questions. Written comments on the proposed rules will be  
18 accepted through the end of business today by e-mail at  
19 [rules@esd.wa.gov](mailto:rules@esd.wa.gov).

20 **A Concise Explanatory Statement of the agency's**  
21 **reasons for adoption of the rules, including a summary and**  
22 **response to all comments received after the publication of**  
23 **the Proposed Rules will be placed in the permanent**  
24 **rulemaking file and posted online. This document will be**  
25 **sent to all interested parties who have signed up to**

1 receive Paid Family and Medical Leave rules e-mails.

2 We will begin with Brett Cain who will provide a  
3 brief explanation of the proposal.

4 MR. BRETT CAIN: Thanks, Janette.

5 There are several proposed rule amendments for  
6 today's hearing. The first clarifies the definition of  
7 placement by outlining circumstances that will not qualify  
8 for paid family leave to bond with a child.

9 The second clarifies that hours worked in  
10 self-employment prior to the effective date of the election  
11 of coverage do not count toward benefit eligibility.

12 The third adds employee reporting requirements to  
13 include employees' dates of birth to quarterly reports, and  
14 a report of "no payroll" for up to a maximum of eight  
15 consecutive quarters when employers have no employees or  
16 payroll to report.

17 The last corrects a pointer to a repealed statute and  
18 clarifies situations in which designated representatives  
19 may file weekly claims.

20 I encourage you all to read the text of the bill and  
21 the rules along with supporting documents that are  
22 available on the rulemaking web page for a more robust  
23 understanding.

24 Thank you for your interest and participation in our  
25 rulemaking efforts and we look forward to hearing your

1 comments today.

2 MS. JANETTE BENHAM: Thank you, Brett.

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

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

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

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

15 The first rule we'll accept comment on is WAC  
16 192-500-195 Placement. Proposed amendments to this rule  
17 clarify and outline circumstances that will not qualify for  
18 paid leave to bond with a child. These clarifications are  
19 in line with the definition of "family leave" in RCW  
20 50A.05.010.

21 We are now ready to accept public comment for WAC  
22 192-500-195.

23 I will leave time for comment here, and I'll just  
24 pause. If anyone has comments on this rule, please unmute  
25 yourselves and provide comment.



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(No response)

MS. JANETTE BENHAM: Okay, hearing no comments on this rule, I will move to the next rule.

The next rule we'll accept comment on is WAC 192-510-010, Election, withdrawal, and cancellation of coverage. Proposed amendments to this rule clarify provisions of RCW 50A.10.010 (Teams audio drop) toward an individual's benefit eligibility determination.

We are now ready to accept public comment for WAC 192-510-010, Election, withdrawal, and cancellation of coverage.

And I'll pause here for individuals to provide comment.

(No response)

MS. JANETTE BENHAM: Okay, I'll go ahead and move on to the next rule.

The next rule we'll accept comment on is WAC 192-540-030, What are employers required to report to the Department? The proposed amendments to this rule add two requirements for employer quarterly reports and will help ensure that employer reports are complete and correct. The first is a report of no payroll and the second is employees' dates of birth. The report of no payroll will be required for up to a maximum of eight consecutive quarters when an employer has no paid wages to report. If

1 an employer notifies the Department before the end of eight  
2 consecutive quarters that they have no employees to report  
3 and they don't plan on having employees in the foreseeable  
4 future, they won't be required to submit or continue  
5 submitting a report of no payroll. This requirement will  
6 assist with the Department's annual employer sizing  
7 determinations, will ensure employers aren't flagged for  
8 unnecessary audits, and aligns with unemployment insurance  
9 practices of no payroll reports.

10 The proposed amendment adding employees' dates of  
11 birth will benefit both the Paid Family and Medical Leave  
12 program and the WA Cares Fund program since the Department  
13 is utilizing one employer report for both programs. The  
14 department has statutory requirements for both programs  
15 that this information will assist with. Under RCW  
16 50B.04.080 the Department is required, to the extent  
17 feasible, to use the same premium assessment, collection,  
18 and reporting procedures for the WA Cares Fund as it does  
19 for Paid Family and Medical Leave. In addition to fund  
20 solvency projections required under statute for both  
21 programs, requiring dates of birth for employees will help  
22 with determining employment eligibility for prorated  
23 benefit for WA Cares Fund under RCW 50B.04.030.

24 We are now ready to accept public comment for WAC  
25 192-540-030, What are employers required to report to the

1 Department?

2 And I will pause here so individuals can provide  
3 comment. Please remember, if you are providing comment, to  
4 state your name, spell your name, and if you are here in a  
5 representative capacity, please let us know with what  
6 organization you are with. And I'll pause here for  
7 comment.

8 MR. BRETT CAIN: Mary, are you able to unmute  
9 yourself? I see your hand up.

10 MS. MARY SCHWEDLAND: Yes. Can you hear me?

11 MR. BRETT CAIN: Yes.

12 MS. MARY SCHWEDLAND: Okay. My name is Mary  
13 Schwedland, S-C-H-W-E-D-L-A-N-D. I'm with Frahm and  
14 Associates, CPAs, and I feel that this rule would put an  
15 unnecessary burden on us because we have a lot of annual  
16 payrolls that we file. And our payroll partner, which is  
17 Patriot Software, they have a really hard time filing the  
18 zero reports for the L&I and for other requirements for  
19 Washington State and so having to put this Paid Family  
20 Medical Leave as a zero report every quarter, I could just  
21 see it messing all the software people up. That's my  
22 concern.

23 MS. JANETTE BENHAM: Thank you for your comment,  
24 Mary.

25 MS. MARY SCHWEDLAND: You're welcome.

1 MS. JANETTE BENHAM: Do we have any other -- oh,  
2 I see someone has their hand raised.

3 Veronica Castro, do you have a comment?

4 MS. VERONICA CASTRO: Yes, this is Veronica  
5 Castro, C-A-S-T-R-O, and I am with Intuit Payroll.

6 And my comment is regarding the second requirement,  
7 which is to add the employee's date of birth to the  
8 quarterly wage report. And in terms of just the request,  
9 that would put, I would say, employer burden since all of  
10 the employers today, when using our payroll services,  
11 aren't required to provide us with the birth date. Not a  
12 lot of agencies request that information, and that's why  
13 it's not a required data element that we collect.

14 And, truthfully, not a lot of employers collect that  
15 information from their employees either. There are  
16 agencies that we do have new hire reporting which, you  
17 know, depending on the agency, we do actually ask for that  
18 information. But, again, it would put the employer now,  
19 you know, trying to get that information from their  
20 employees and, again, not typical for most of the agency  
21 reporting that we do.

22 MS. JANETTE BENHAM: Thank you for your comment,  
23 Veronica.

24 Fawn Butler, would you like to provide comment?

25 MS. FAWN BUTLER: Good morning. Thanks for

1 hearing my comment. My name is Fawn Butler, B-U-T-L-E-R.  
2 I'm with FBCPA Group, PS, Inc., and we provide payroll for  
3 clients, and I think this would put -- the requirement to  
4 provide date of birth would put an unnecessary burden on  
5 certain employers, specifically employers who use union  
6 labor. Oftentimes they are getting information, sparse  
7 information, from people coming out of the union hall, and  
8 it does not include date of birth. That's not something  
9 that they are currently collecting, and it would -- it  
10 would be an unnecessary burden on them. And that's it.

11 MS. JANETTE BENHAM: Thank you. Thank you for  
12 your comment, Fawn.

13 MS. FAWN BUTLER: You're welcome.

14 MS. JANETTE BENHAM: Is there anyone else who  
15 would like to provide comment on this rule?

16 (No response)

17 We'll go ahead and move forward. The last rule we'll  
18 accept comment on for today's hearing is WAC 192-800-150,  
19 Can an employee designate a representative to act on their  
20 behalf? The amendments to this rule correct a pointer to a  
21 repealed statute and clarify that weekly claims may be  
22 filed by an estate executor or administrator if the  
23 employee dies after they've been approved for benefits.

24 We are now ready to accept public comment for WAC  
25 192-800-150, Can an employee designate a representative to

1 act on their behalf?

2 And I'll pause here for comment.

3 (No response)

4 MS. JANETTE BENHAM: Okay. Hearing no comments  
5 on this rule, I'd like to take a moment and ask if there is  
6 any additional testimony on any of the proposed rules  
7 included in today's hearing. If there is additional  
8 testimony, please feel free to provide comment and indicate  
9 which rule from today's hearing you're providing comment  
10 on.

11 And I'll pause here to give everyone an opportunity  
12 to provide comment.

13 (No response)

14 MS. JANETTE BENHAM: Again, is there any further  
15 testimony from anyone on the phone before I conclude this  
16 hearing?

17 (No response)

18 MS. JANETTE BENHAM: In conclusion, this hearing  
19 was convened to consider testimony on Paid Family and  
20 Medical Leave rulemaking.

21 All oral testimony presented at this hearing and any  
22 written submissions will become part of the official  
23 record.

24 The deadline for submission of written comments is by  
25 the end of the day today, May 9, 2023. You may submit

1 written comments by e-mailing rules@esd.wa.gov. Comments  
2 must be received by the end of the day to be considered  
3 part of this rulemaking.

4 A final decision regarding adoption of the proposed  
5 rules will be made after all testimony and written comments  
6 have been fully considered, which will be on or after May  
7 16, 2023. The planned effective date of any adopted rules  
8 will be July 1 of 2023. On behalf of Commissioner Feek,  
9 thank you for participating in this hearing. The hearing  
10 is adjourned at 9:25 a.m. on May 9, 2023.

11 Thank you all for attending.

12 (Concluded at 9:25 a.m.)

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C E R T I F I C A T E

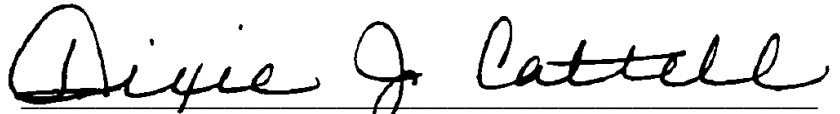
I, DIXIE J. CATTELL, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, do hereby certify:

That the foregoing VERBATIM RECORD OF PROCEEDINGS was taken before me and completed on the 9TH day of May, 2023, and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of the proceedings;

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 VERBATIM RECORD OF PROCEEDINGS and promptly serving the same upon MS. JANETTE BENHAM.

IN WITNESS HEREOF, I have hereunto set my hand this 9TH day of MAY, 2023.



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



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