

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  
Thursday, October 26, 2023  
Olympia, Washington

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APPEARANCES:

PRESIDING OFFICER: JASON BARRETT  
Lead Policy Analyst

ALSO PRESENT: JANETTE BENHAM  
BRETT CAIN

REPORTED BY: REBECCA DONLEY, CCR No. 3184

Puget Sound Reporting  
800-576-7129

1           MR. JASON BARRETT: Good morning. My name is  
2 Jason Barrett and I am the Lead Policy Analyst for the Leave  
3 and Care Division of the Washington State Employment  
4 Security Department. Thank you for joining us today for  
5 this rulemaking hearing. 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 other general questions, please call our customer care  
14 team at 833-717-2273. We will not be able to answer any  
15 questions during this hearing.

16           Today's hearing is regarding the proposal that revises  
17 sections of Washington Administrative Code regarding  
18 implementation of Substitute Senate Bills 5286 and 5586, and  
19 aligning public records rules for the Leave and Care  
20 Division with agency rules that are already in place. If  
21 you would like to provide written comments related to these  
22 rules, you may do so by email at [rules@esd.wa.gov](mailto:rules@esd.wa.gov). We'll  
23 continue to accept written comments through the close of  
24 business today.

25           To view the electronic version of the proposed rules

1 you can go to [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking). The proposed  
2 rules are under the "Current Rulemaking" heading. Clicking  
3 on the plus sign next to the rules expands the topic. The  
4 rules for today's hearing are listed under the "CR-102:  
5 Proposed Rules" title. We'll go through the proposed rules  
6 in the order they appear on the website.

7 Before we begin, are there any questions about the  
8 purpose of today's meeting or where to find the proposed  
9 rules? Remember, you can unmute yourselves using your Teams  
10 window or by hitting \*6 if you are joining by phone. If  
11 you're not providing testimony, please remember to keep  
12 yourself muted throughout the hearing. If you're calling in  
13 for the hearing, please do not place this meeting on hold to  
14 take another call. The hearing cannot proceed if there is  
15 hold music or messages played while the call is on hold.

16 Are there any questions about why we're here this  
17 morning or where to find the rules?

18 (No response.)

19 MR. JASON BARRETT: With that, we'll go ahead and  
20 start the hearing.

21 Pursuant to the authority given under Washington State  
22 Law RCW 50A.05.060, RCW 50A.25.040 as amended by SSB 5586,  
23 RCW 50A.10.030, Chapter 42.30 RCW of the Open Public  
24 Meetings Act, and Chapter 34.05 RCW of the Administrative  
25 Procedure Act, this hearing is hereby convened.

1           For the record, this hearing is beginning at 9:04 a.m.  
2           On October 26, 2023 online and by conference call.

3           This hearing is convened to consider testimony  
4           concerning Paid Family and Medical Leave rulemaking.

5           Notice of this hearing was filed and published in the  
6           Washington State Register on September 19, 2023, as WSR  
7           number 23-19-086, was sent to interested parties, and was  
8           posted on the department's webpage.

9           My name is Jason Barrett and I'm the Lead Policy  
10          Analyst for the Leave and Care Division of the Washington  
11          State Employment Security Department. I represent  
12          Commissioner Cami Feek as the hearing officer presiding at  
13          this public rulemaking hearing.

14          There are other members of the Leave and Care Policy  
15          Team attending this hearing. Please introduce yourselves by  
16          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          programs at the Employment Security Department.

20                 MR. BRETT CAIN: Good morning, everyone. I'm  
21          Brett Cain. I'm a policy analyst and work on policy and  
22          rules for the Leave and Care programs here at ESD.

23                 MR. JASON BARRETT: Thank you, Janette and Brett.  
24          Please be advised that this hearing is being transcribed by  
25          a court reporter and is also being recorded by the Microsoft

1 Teams platform. The transcript and recording will become a  
2 part of the official rulemaking file. To facilitate this  
3 transcription, please state and then spell your name before  
4 your testimony. If you are here in a representative  
5 capacity, please include who you are providing testimony on  
6 behalf of.

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

16 A concise explanatory statement of the agency's  
17 reasons for adoption of the rules, including a summary and  
18 response to all comments received after the publication of  
19 the proposed rules, will be placed in the permanent  
20 rulemaking file and posted online. This document will be  
21 sent to all interested parties who have signed up to receive  
22 Paid Family and Medical Leave rules emails.

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

25 MS. JANETTE BENHAM: Thank you, Jason.

1           A portion of the proposed rules for today's hearing  
2 include amendments to implement legislation. Substitute  
3 Senate Bills 5286 and 5586 passed during the 2023  
4 legislative session and amended parts of the Paid Family and  
5 Medical Leave law in Title 50A RCW.

6           Substitute Senate Bill 5286 changed the calculation  
7 the department must use to determine the Paid Family and  
8 Medical Leave premium each year.

9           Substitute Senate Bill 5586 allows employers to access  
10 certain data points related to their employees' use of paid  
11 family or medical leave. I want to acknowledge that the  
12 narrative on the CR-102 form inadvertently refers to  
13 additional information available to employers that was not  
14 included in the final version of the bill.

15           The agency also proposes changes to the public records  
16 rules to eliminate redundancies and align the Leave and Care  
17 Division's rules with agency rules that are already in  
18 place.

19           I encourage you all to read the text of the bills and  
20 the rules along with the supporting documents that are  
21 available on the rulemaking webpage for a more robust  
22 understanding. Thank you for your interest and  
23 participation in our rulemaking efforts, and we look forward  
24 to hearing your comments today.

25           MR. JASON BARRETT: Thank you, Janette. We will

1 now hear testimony from those in attendance. I'll go  
2 through each rule individually, outline the proposed  
3 amendments to each rule, and accept comment on each rule.  
4 All attendees are currently muted. If you wish to speak,  
5 you can unmute yourselves through your Teams window or by  
6 pressing \*6 if you are joining by phone.

7 When you testify, please speak clearly, state your  
8 name, spell your last name, and state who you represent if  
9 you are here in a representative capacity. When you finish  
10 testifying, please mute yourself through your Teams window  
11 or hit \*6 again on your phone.

12 The first rule we'll accept comment on is WAC  
13 192-500-035, Interested parties. Substitute Senate Bill  
14 5586 has an effective date of January 1, 2024, and allows  
15 employers to access certain data points related to their  
16 employees' use of paid family or medical leave.  
17 Specifically, employers will be permitted to know whether an  
18 employee applied for and received benefits for a particular  
19 week, as well as the type of leave being taken. The  
20 proposed amendment specifies which employers are permitted  
21 to access this information, and is intended to prevent other  
22 employers who may be considered interested parties for other  
23 purposes from accessing confidential information.

24 We are now ready to accept public comment for WAC  
25 192-500-035, Interested parties.

1 (No response.)

2 MR. JASON BARRETT: Are there any comments on this  
3 rule before I move on?

4 (No response.)

5 MR. JASON BARRETT: The next rule we'll accept  
6 comment on is WAC 192-510-090, How will the department  
7 determine the premium rate for each calendar year?

8 Substitute Senate Bill 5286 changed the calculation  
9 the department must use to determine the Paid Family and  
10 Medical Leave premium each year. The proposed amendments  
11 establish the time period for which each calculation is  
12 applied based on the requirements of the bill in the event  
13 of an appeal. The rule also clarifies that small business  
14 grants shall also be considered when determining agency  
15 expenditures with regard to the new premium calculation.

16 We are now ready to accept public comment for WAC  
17 192-510-090, How will the department determine the premium  
18 rate for each calendar year?

19 (No response.)

20 MR. JASON BARRETT: Are there any comments on this  
21 rule before I move on?

22 (No response.)

23 MR. JASON BARRETT: The next rule we'll accept  
24 comment on is WAC 192-810-010, Definitions.

25 The proposed amendments to this rule are regarding



1 public records and refer to agency rules in WAC 192-02-020  
2 to eliminate redundancy. One subsection was kept because it  
3 is specific to Paid Family and Medical Leave.

4 We are now ready to accept public comment for WAC  
5 192-810-010, Definitions.

6 (No response.)

7 MR. JASON BARRETT: Are there any comments on this  
8 rule before I move on?

9 (No response.)

10 MR. JASON BARRETT: The next rule we'll accept  
11 comment on is WAC 192-810-030, How do individuals and  
12 entities request records from the department?

13 The proposed amendments to this rule refer to agency  
14 rules in Chapter 192-02 WAC and eliminate redundant  
15 information regarding how to request records. The  
16 information that is not changed or eliminated in this rule  
17 is specific to Paid Family and Medical Leave privacy  
18 provisions in RCW 50A.25.040.

19 We are now ready to accept public comment for WAC  
20 192-810-030, How do individuals and entities request records  
21 from the department?

22 (No response.)

23 MR. JASON BARRETT: Are there any comments on this  
24 rule before I move on?

25 (No response.)

1 MR. JASON BARRETT: The last rule we'll accept  
2 comment on for today's hearing is WAC 192-810-020, Purpose.

3 The proposal is to repeal this rule to eliminate  
4 redundancy because the purpose is already addressed in  
5 agency rules under WAC 192-02-010.

6 We are now ready to accept public comment for WAC  
7 192-810-020, Purpose.

8 (No response.)

9 MR. JASON BARRETT: Are there any comments on this  
10 rule before I move on?

11 (No response.)

12 MR. JASON BARRETT: I'd like to take a moment and  
13 ask if there is any additional testimony on any of the  
14 proposed rules included in today's hearing. If there is any  
15 additional testimony, please feel free to provide comment  
16 and indicate which rule from today's hearing you are  
17 providing comment on. Are there any comments on any of  
18 today's rules?

19 (No response.)

20 MR. JASON BARRETT: I want to ask one final time  
21 before I close, is there any further testimony from anyone  
22 on the phone or joining on Teams before I conclude this  
23 hearing on today's rules?

24 (No response.)

25 MR. JASON BARRETT: In conclusion, this hearing

1 was convened to consider testimony on Paid Family and  
2 Medical Leave rulemaking. All oral testimony presented at  
3 this hearing and written submissions will become part of the  
4 official record. The deadline for submission of written  
5 comments is by the end of the day today, October 26, 2023.  
6 You may submit written comments by emailing  
7 rules@esd.wa.gov. Comments must be received by the end of  
8 the day to be considered part of this rulemaking.

9 A final decision regarding adoption of the proposed  
10 rules will be made after all testimony and written comments  
11 have been fully considered, which will be on or after  
12 November 2, 2023. The planned effective date of any adopted  
13 rules is January 1, 2024.

14 On behalf of Commissioner Cami Feek, thank you for  
15 participating in this hearing. This hearing is adjourned at  
16 9:18 a.m. on October 26, 2023.

17 (Concluded at 9:18 a.m.)  
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C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I, Rebecca Donley, a certified court reporter in and for the State of Washington, do hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth;

That the witness was by me first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth; and that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and thereafter transcribed under my direction;

That the foregoing transcript is a true record of the testimony given by the witness and of all objections made at the time of the examination, to the best of my ability.

I further certify that I am in no way related to any party to this matter nor to any counsel, nor do I have any interest in this matter.

Witness my hand this 9th day of November 2023.

*Rebecca E. Donley*  
REBECCA E. DONLEY CCR  
CCR License #3184  
Certified Court Reporter in and for the State of Washington, residing in Poulsbo.