

Washington State Family & Paid Leave
PFML Rulemaking Stakeholder Meeting
Placement and Precedential Decisions

* * * * *

Thursday, February 29, 2024

9:00 a.m.

Olympia, Washington

1 FOR WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT LEAVE
AND CARE DIVISION:

2

09:00:49 3 09:00:28 MS. JANETTE BENHAM, Rules Coordinator
MR. JASON BARRETT, Lead Policy Analyst

4 09:00:57 Mr. BRETT CAIN, Policy Analyst

5 Employment Security Department

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1 BE IT REMEMBERED that on Thursday, February 29,
2 2024, commencing at 9:00 a.m., via Microsoft Teams,
3 Washington State Family and Paid Leave, PFML Rulemaking
4 Stakeholder Meeting, Placement and Precedential Decisions,
5 taken before Dorene Boyle, Certified Court Reporter in and
6 for the State of Washington.

7 The following proceedings took place:

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09:00:22 9 MS. JANETTE BENHAM: Okay. Thank you and
09:00:23 10 good morning and welcome everyone. My name is Janette
09:00:26 11 Benham, and I'm the Rules Coordinator for the Leave
09:00:30 12 and Care Division at the Employment Security
09:00:32 13 Department.

09:00:32 14 There are other members from the Leave and Care
09:00:34 15 Policy and Rules Team on the call, and I'll ask that
09:00:37 16 they introduce themselves now.

09:00:40 17 (NO RESPONSE).

09:00:40 18 MS. JANETTE BENHAM: Brett and Jason, are
09:00:46 19 you on the call?

09:00:47 20 MR. BRETT CAIN: I am.

09:00:48 21 Good morning. Brett Cain. I'm a Policy Analyst
09:00:50 22 for Leave and Care programs here at Employment
09:00:53 23 Security.

09:00:54 24 MR. JASON BARRETT: And I'm Jason Barrett.
09:00:56 25 I'm the lead Policy Analyst for the Leave and Care

09:01:00 1 Division.

09:01:00 2 MS. JANETTE BENHAM: Thank you, Brett and
09:01:02 3 Jason.

09:01:02 4 We're here this morning to review and
09:01:05 5 discuss drafts of rule amendments that the Department
09:01:08 6 is considering regarding the Paid Family and Medical
09:01:10 7 Leave program.

09:01:11 8 We'll be discussing changes to the definition of
09:01:14 9 placement and when decisions made by the
09:01:16 10 Commissioner's Review Office will be made available to
09:01:19 11 the public.

09:01:21 12 The specific rule amendments we'll be discussing
09:01:24 13 are in WAC 192-500-195, Placement, and WAC
09:01:37 14 192-800-155, When are proceedings open to the public,
09:01:40 15 and what information from a proceeding before the
09:01:43 16 appeal tribunal or commissioner is publically
09:01:47 17 disclosable.

09:01:49 18 The drafts that we'll be reviewing and discussing
09:01:51 19 can be found at paidleave.wa.gov/rulemaking. If you
09:01:57 20 look at Current Rulemaking, the second subtitle is
09:02:01 21 called "Placement and Precedential Decisions." You
09:02:04 22 can expand that list and click on each draft rule to
09:02:07 23 see the text of the proposed changes.

09:02:09 24 If you've called in for this meeting, please keep
09:02:13 25 your mute on by using the mute function on your phone

09:02:16 1 or by pressing *6.

09:02:19 2 Please keep in mind that the subject of this call
09:02:21 3 is the draft rules document I just referenced. We
09:02:24 4 will not be discussing other rules. And if you have a
09:02:27 5 question about your claim or application, please hang
09:02:30 6 up and call our customer care team at 833-717-2273.

09:02:37 7 I also want to ask that if you're commenting on
09:02:44 8 the proposed rules -- or the draft rules, excuse me,
09:02:47 9 to please state and spell your name and indicate if
09:02:51 10 you are here on behalf of an organization. And I
09:02:53 11 again want to remind everyone that this meeting is
09:02:57 12 being recorded.

09:02:57 13 Before we open the floor for comments, I want to
09:03:00 14 give folks an opportunity to ask any questions about
09:03:03 15 anything I just discussed and why we're here, where to
09:03:05 16 find the draft rules, or any other housekeeping items.
09:03:11 17 Go ahead and unmute yourselves using your computer or
09:03:18 18 hit *6 on your phone if you would like to ask any
09:03:21 19 questions.

09:03:22 20 (NO RESPONSE).

09:03:30 21 MS. JANETTE BENHAM: With that, we'll move
09:03:31 22 to our first rule, WAC 192-500-195, Placement.

09:03:38 23 The draft changes to the definition of placement
09:03:40 24 will clarify under which circumstances family leave
09:03:45 25 can be taken to bond with a child placed in the home.

09:03:47 1 Specifically, the changes allow qualifying leave to be
09:03:50 2 taken either within 12 months of the date a child is
09:03:53 3 placed in the employee's home or within 12 months of
09:03:56 4 the date a child's adoption is legally finalized.

09:03:59 5 Clarification was also added that --

09:04:03 6 I'm sorry, Dorene, did you have a question?

09:04:05 7 THE REPORTER: No.

8 MS. JANETTE DENHAM: Okay. It sounded like
9 you unmuted for a second.

10 THE REPORTER: Oh. No, I didn't do
09:04:15 11 anything.

09:04:15 12 MS. JANETTE DENHAM: Okay, thank you.

09:04:16 13 Clarification was also added that an employee is
09:04:18 14 only entitled to a maximum of 12 weeks of family leave
09:04:21 15 for the placement of a child. The rule change is
09:04:25 16 structured to allow for qualifying leave to be taken
09:04:28 17 either within 12 months of the date of physical
09:04:31 18 placement or within 12 months of the date the child --
09:04:34 19 the adoption is legally finalized.

09:04:37 20 Are there any questions or comments on this rule?

09:04:50 21 MS. MOLLY CARLSON: I have a question about
09:04:52 22 the 12 weeks.

09:04:53 23 MS. JANETTE BENHAM: Yes.

09:04:53 24 MS. MOLLY CARLSON: So can you clarify, is
09:04:55 25 that 12 calendar weeks? Or sometimes we have

09:04:59 1 employees who are approved, for example, for only 16
09:05:01 2 hours of benefit per week. And so is that --

09:05:04 3 MR. JASON BARRETT: Molly, I'm so sorry to
09:05:10 4 interrupt. Could you introduce yourself and let us
5 know --

6 MS. MOLLY CARLSON: Oh, sure.

09:05:12 7 MR. JASON BARRETT: -- whom you're
09:05:12 8 representing.

09:05:13 9 MS. MOLLY CARLSON: Sure. I'm Molly
09:05:15 10 Carlson, and I'm from Frontier Behavioral Health.

09:05:19 11 MR. JASON BARRETT: Thank you so much.

09:05:21 12 MS. MOLLY CARLSON: So, again, just asking
09:05:22 13 for clarification on 12 weeks, if that's 12 calendar
09:05:25 14 weeks or if somebody has, for example, approved for 16
09:05:28 15 hours of PFML per week, is that 16 hours then --
09:05:31 16 because it's only 16 hours a week, does that extend
09:05:35 17 beyond a 12-calendar week period of time?

09:05:38 18 MR. JASON BARRETT: So I think this is
09:05:39 19 probably a more general PFML question, as opposed to
09:05:43 20 one that is specifically related to today's rules.

09:05:47 21 Generally speaking, the bank of hours of an
09:05:50 22 employee is established by taking their typical
09:05:54 23 workweek hours and multiplying by 12 for a particular
09:05:59 24 type of leave. So that -- if they will draw from that
09:06:05 25 bank of hours every week, they can -- the number of

09:06:07 1 hours that they claim each week can vary depending on
09:06:11 2 their particular circumstances, but generally it's --
09:06:14 3 you know, whether it's exactly 12 weeks or 16 weeks
09:06:19 4 depends on exactly how many hours of leave they're
09:06:22 5 claiming each week.

09:06:29 6 MS. MOLLY CARLSON: Thanks.

09:06:35 7 MS. JANETTE BENHAM: Maggie Humphreys, you
09:06:37 8 have a question. Go ahead.

09:06:38 9 MS. MAGGIE HUMPHREYS: Thank you. I have a
09:06:40 10 comment. Maggie Humphreys with MomsRising Members of
09:06:44 11 Paid Family and Medical Leave Advisory Committee.

09:06:45 12 I just first want to express gratitude to the
09:06:48 13 Department for pushing this rule forward after much
09:06:52 14 discussion at the advisory committee that came about
09:06:56 15 from comments and leadership and those experiences of
09:06:59 16 foster placement families, including some who are on
09:07:02 17 this call today.

09:07:03 18 So I want to thank also those families for
09:07:06 19 bringing this forward. I think this is a good first
09:07:09 20 step to ensuring equitable access to paid family
09:07:14 21 medical leave for foster to adopt families. And we
22 appreciate --

09:07:23 23 (INAUDIBLE).

09:07:23 24 MS. JANETTE BENHAM: I'm so sorry to
09:07:24 25 interrupt you, Maggie.

09:07:24 1 Dorene, can you please mute yourself. Thank you.

09:07:31 2 Okay, go ahead, Maggie.

09:07:31 3 MS. MAGGIE HUMPHREYS: The rule as written,
09:07:32 4 we think it reflects the kind of -- we think it
09:07:35 5 reflects the intention that we've been discussing at
09:07:39 6 the advisory committee, and appreciate the
09:07:42 7 Department's work on this. Thank you.

09:07:45 8 MS. JANETTE BENHAM: Thank you, Maggie.
09:07:46 9 Appreciate the comment.

09:07:49 10 Do we have any more comments or questions about
09:07:51 11 this rule?

09:07:58 12 We have -- Is it Lexa Murphy?

09:08:03 13 MS. LEXA MURPHY: Yes.

09:08:03 14 MS. JANETTE BENHAM: Okay.

09:08:05 15 MS. LEXA MURPHY: Hi, I'm Lexa.

09:08:06 16 MS. JANETTE BENHAM: Okay, thank.

09:08:07 17 MS. LEXA MURPHY: We are so excited to
09:08:09 18 listen in. We are foster to adopt parents that have
09:08:13 19 been impacted by this law. We are foster patients,
09:08:16 20 and we're both doctors, and had 72 hours notice before
09:08:21 21 our kids joined our family. It did not make a ton of
09:08:25 22 sense for our family or for our jobs to be able to
09:08:27 23 take leave at that point.

09:08:28 24 When we finalized adoption, we were really
09:08:31 25 careful to make sure we planned our time for family

09:08:33 1 leave around our kids and around our employment. And
09:08:36 2 then when applying for family leave after adoption, we
09:08:39 3 were denied because we were too far out from the
09:08:41 4 placement date, which was devastating to us as a
09:08:44 5 family.

09:08:44 6 I think there are many ways in which as foster
09:08:47 7 parents we are denied access to experience of it being
09:08:50 8 typical families, even after adoption. So this is
09:08:53 9 something we've been tracking, we've been so hopeful
09:08:55 10 for, that foster to adopt families are able to be able
09:08:59 11 to choose when it makes sense for them to take leave.
09:09:01 12 And for many families it will be after adoption, when
09:09:04 13 they become a full family.

09:09:05 14 So we are just so grateful to be able to listen
09:09:08 15 in. And we're really supportive of these changes. We
09:09:11 16 think it will make a big difference for other foster
09:09:15 17 to adopt families to be able to take leave at the time
09:09:17 18 that makes sense for them. So thank you for including
09:09:19 19 us in this rulemaking.

09:09:22 20 MS. JANETTE BENHAM: All right, thank you
09:09:22 21 for your comment.

09:09:34 22 Are there any more comments or questions about
09:09:36 23 this rule?

24 (NO RESPONSE).

09:10:02 25 MS. JANETTE BENHAM: Okay. We will move on

09:10:03 1 to WAC 192-800-155, When are proceedings open to the
09:10:09 2 public, and what information from a proceeding before
09:10:11 3 the appeal tribunal or commissioner is publicly
09:10:14 4 disclosable.

09:10:16 5 The draft changes to this rule outline that a
09:10:19 6 decision that is appealed to the Commissioner's Review
09:10:21 7 Office may be made available to the public, and that
09:10:24 8 all personal identifying information will be redacted.

09:10:28 9 Changes also state that if a Commissioner's
09:10:31 10 decision is appealed to Superior Court, the Department
09:10:34 11 is required to file the record unsealed and that court
09:10:37 12 rules will apply if an interested party moves to seal
09:10:41 13 those records.

09:10:43 14 For a little more background and process
09:10:45 15 regarding this change: A person or party who is
09:10:47 16 dissatisfied with an Initial Order from the Office of
09:10:50 17 Administrative Hearings may file a petition for review
09:10:53 18 with the Commissioner's Review Office. After thorough
09:10:56 19 review at the legal proceedings, they will issue a
09:10:58 20 written decision of the Commissioner. The
09:11:00 21 Commissioner's Office may want to publish carefully-
09:11:04 22 selected decisions. Publishing decisions that set
09:11:06 23 precedent for the Paid Family and Medical Leave
09:11:09 24 program will allow for consistency in interpreting the
09:11:12 25 law, from program adjudication through the appeal

09:11:14 1 process.

09:11:15 2 Are there any questions or comments on this rule?

09:11:50 3 (NO RESPONSE).

09:11:53 4 MS. JANETTE BENHAM: I just want to give an
09:11:56 5 opportunity for either rule -- for comments on either
09:11:59 6 rule, if anyone has any comments on either the
09:12:01 7 placement rule or the precedential decisions rule.

09:12:07 8 I also want to say that I really appreciate, and
09:12:10 9 I think we all do, the comments on the placement rule.
09:12:14 10 It's great to hear such positive support from that.

09:12:19 11 Linda Hammond, go ahead, please.

09:12:24 12 MS. LINDA HAMMOND: Good morning. My name
09:12:26 13 is Linda Hammond, and I'm a Benefit Specialist for the
09:12:30 14 Leave and Care Paid Family Leave program.

09:12:31 15 And I was wondering, is there any plans to
09:12:37 16 clarify on -- pardon me, I'm losing my voice -- the
09:12:41 17 placement one, the placement WAC, for section B -- I'm
09:12:49 18 sorry, section 3, part B, where it says about -- I'm
09:12:57 19 going to there -- that, per RCW, if no leave was taken
09:13:02 20 within 12 months of when the child was first placed?

09:13:05 21 So is there plans to clarify, when it says if no
09:13:08 22 leave was taken, if that is no leave taken from the
09:13:11 23 Paid Family Medical Leave or no leave taken overall
09:13:15 24 for the placement or adoption with the employer?

09:13:17 25 Because I think for us, adjudicating specialists,

09:13:19 1 that's going to be something we would have to
09:13:22 2 consider, and I don't feel like it's addressed the way
09:13:26 3 this has been.

09:13:27 4 MS. JANETTE BENHAM: Linda, this will be
09:13:29 5 addressed. We can have a conversation outside of this
09:13:33 6 stakeholder meeting, I think, to address the process
09:13:38 7 and policy, about how to adjudicate these. So please
09:13:43 8 reach out to the policy -- with your question to one
09:13:48 9 of the policy team members.

09:13:50 10 MS. LINDA HAMMOND: Perfect. Thank you,
09:13:52 11 Janette.

09:13:52 12 And I do also just want to add that I really am
09:13:55 13 glad that this is being visited and moving forward
09:13:58 14 because a lot of specialists that I work with also
09:14:01 15 agree that the way it was originally written doesn't
09:14:04 16 necessarily help everybody in the circumstances, and
09:14:08 17 timing can be an issue. So I just want to let
09:14:12 18 everybody know that it's good that we're doing this.
09:14:15 19 Thank you.

09:14:16 20 MS. JANETTE BENHAM: Thank you.

09:14:16 21 Do we have any other comments on either of the
09:14:19 22 draft rules?

09:14:33 23 (NO RESPONSE)

09:14:34 24 MS. JANETTE BENHAM: Okay. With that, we
09:14:36 25 will close out this meeting. Thank you for the

09:14:38 1 comments and discussion this morning.

09:14:40 2 Regarding next steps, we will gather all the
09:14:43 3 comments we've received on these amendments to
09:14:46 4 determine which should be incorporated, then we'll
09:14:49 5 draft paperwork to formally propose rule language.

09:14:52 6 Once the proposed rules and paperwork are filed,
09:14:53 7 individuals will have an opportunity to participate in
09:14:56 8 the public hearing and provide written comments up to
09:14:59 9 and through the day of the hearing.

09:15:01 10 Following the hearing, if no substantive changes
09:15:06 11 to the amended rules are necessary, we will file
09:15:08 12 paperwork providing a response to each comment
09:15:11 13 received during the comment period and hearing, and
09:15:14 14 then adopt the rules.

09:15:15 15 Please visit paidleave.wa.gov/rulemaking for more
09:15:21 16 information on when these next steps will occur. And
09:15:25 17 if you haven't already signed up to receive rulemaking
09:15:29 18 notifications, you can do so there.

09:15:31 19 If you have any additional comments or questions,
09:15:33 20 please feel free to send us an e-mail at
09:15:39 21 rules@esd.wa.gov. Again, that's rules@esd.wa.gov.

09:15:46 22 Thank you so much for joining us this morning and
09:15:48 23 we hope you enjoy the rest of your day.

09:16:41 24 THE REPORTER: I'm assuming you want this
09:16:43 25 typed up?

09:16:47 1

MS. JANETTE BENHAM: Yes, we'll get the

09:16:48 2

typed up transcript.

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(RULE MAKING HEARING

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CONCLUDED AT 9:17 A.M.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

THIS IS TO CERTIFY that I, Dorene Boyle,
Certified Court Reporter in and for the State of Washington
residing at Yakima, reported the within and foregoing
videoconference deposition; said deposition being taken
before me as a Certified Court Reporter via Zoom on the
date herein set forth; that the deponent was first by me
duly sworn via Zoom; that said examination was taken by me
in shorthand and thereafter under my supervision
transcribed, and that same is a full, true and correct
record of the testimony of said deponent, including all
questions, answers and objections, if any, of counsel.

Further certify that I am not a relative or
employee or attorney or counsel of any of the parties, nor
am I financially interested in the outcome of the cause.

IN WITNESS WHEREOF I have hereunto set my hand
this 1st day of March, 2024.

CERT/LIC NO. 2521



Certified Court Reporter in and for the
State of Washington, residing at Yakima