

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

\* \* \* \* \*

Wednesday, April 24, 2024

9:00 a.m.

Olympia, Washington

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

2

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

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

5 Employment Security Department

6 212 Maple Park Avenue SE

7 Olympia, Washington 98501

8 360-902-9500

9 Janette.benham@esd.wa.gov

10 Jason.barrett@esd.wa.gov

11 Brett.cain@esd.wa.gov

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

1 BE IT REMEMBERED that on Wednesday, April 24,  
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:

08:56:29 8

08:59:54 9 MR. JASON BARRETT: Good morning, everyone.

08:59:55 10 My name is Jason Barrett, and I'm the Lead Policy

08:59:58 11 Analyst for the Leave and Care Division of the

08:59:58 12 Washington State Employment Security Department.

09:00:01 13 Thank you very much for joining us today for this

09:00:04 14 rulemaking hearing.

09:00:06 15 I want to discuss a few housekeeping items before

09:00:09 16 we begin the hearing. Just a reminder that this

09:00:12 17 meeting concerns proposed regulations regarding the

09:00:15 18 Paid Family and Medical Leave program. This meeting

09:00:17 19 will not feature discussion of any specific

09:00:20 20 application, and attendance is completely optional.

09:00:23 21 If you have questions regarding your own

09:00:27 22 application or weekly claim for Paid Family and

09:00:28 23 Medical Leave, or if you have other general questions,

09:00:31 24 please call our customer care team at 833.717.2273.

09:00:39 25 We will not be able to answer any questions during

09:00:41 1 this hearing.

09:00:43 2 Today's hearing is regarding the proposal that  
09:00:45 3 revises sections of Washington Administrative Code  
09:00:49 4 regarding an amendment to the definition of  
09:00:51 5 "Placement" as well as the publication of precedential  
09:00:56 6 judicial decisions related to the program. If you  
09:00:57 7 would like to provide written comments related to  
09:01:00 8 these rules, you may do so by e-mail at  
09:01:04 9 rules@esd.wa.gov. We will continue to accept written  
09:01:12 10 comments through the close of business today.

09:01:13 11 To view the electronic version of the proposed  
09:01:15 12 rules, you can go to [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking). The  
09:01:20 13 proposed rules are under the "Current Rulemaking"  
09:01:23 14 heading. Click the plus sign next to "Placement and  
09:01:27 15 Precedential Decisions" to expand the topic. The  
09:01:31 16 rules for today's hearing are listed after the  
09:01:34 17 "CR-102: Proposed Rules" title. We'll go through the  
09:01:37 18 proposed rules in the order they appear on the  
09:01:40 19 website.

09:01:40 20 Before we begin, are there any questions about  
09:01:43 21 the purpose of today's meeting or where to find the  
09:01:45 22 proposed rules? Remember, you can unmute yourself  
09:01:49 23 using your Teams window or by hitting \*6 if you are  
09:01:53 24 joining by phone. Are there any questions before we  
09:02:00 25 begin?

09:02:01 1 (NO RESPONSE).

09:02:03 2 MR. JASON BARRETT: All right. If you're  
09:02:06 3 not providing testimony, please remember to keep  
09:02:08 4 yourself muted throughout the hearing. If you're  
09:02:11 5 calling in for the hearing, please do not place this  
09:02:14 6 meeting on hold to take another call. The meeting  
09:02:18 7 cannot proceed if there is hold music or messages  
09:02:22 8 playing while the call is on hold.

09:02:24 9 We will go ahead and start the hearing.

09:02:25 10 Pursuit to the authority given under Washington  
09:02:30 11 State Law RCW 50A.05.060, Chapter 42.30 RCW of the  
09:02:38 12 Open Public Meetings Act, and Chapter 34.05 RCW of the  
09:02:43 13 Administrative Procedure Act, this hearing is hereby  
09:02:47 14 convened.

09:02:47 15 For the record, this hearing is beginning at 9:04  
09:02:51 16 a.m. on April 24, 2024, online and by conference call.

09:02:57 17 This hearing is convened to consider testimony  
09:03:00 18 concerning Paid Family and Medical Leave rulemaking.

09:03:05 19 Notice of this hearing was filed and published in  
09:03:07 20 the Washington State Register on March 18th, 2024, as  
09:03:12 21 WSR number 24-07-082, was sent to interested parties  
09:03:20 22 and was posted on the department's webpage.

09:03:23 23 My name is Jason Barrett and I am the Lead Policy  
09:03:26 24 Analyst for the Leave and Care Division of the  
09:03:28 25 Washington State Employment Security Department.

09:03:30 1 I represent Commissioner Cami Feek as the hearing  
09:03:34 2 officer presiding at this public rulemaking hearing.

09:03:37 3 There are other members of the Leave and Care  
09:03:40 4 Policy Team attending this hearing. Please introduce  
09:03:46 5 yourselves by name and title.

09:03:48 6 MS. JANETTE BENHAM: Good morning. I'm  
09:03:49 7 Janette Benham. I'm the Rules Coordinator for the  
09:03:52 8 Leave and Care Division.

09:03:53 9 MR. BRETT CAIN: Good morning. My name is  
09:03:55 10 Brett Cain, and I am a Policy Analyst for the Leave  
09:03:58 11 and Care Program here at ESD.

09:04:04 12 MR. JASON BARRETT: Thank you, Janette and  
09:04:06 13 Brett.

09:04:07 14 Please be advised that this hearing is being  
09:04:09 15 transcribed by a court reporter and is also being  
09:04:12 16 recorded by the Microsoft Teams platform. The  
09:04:15 17 transcript and recording will become a part of the  
09:04:18 18 official rulemaking file. To facilitate the  
09:04:20 19 transcription, please state and then spell your name  
09:04:22 20 before your testimony. If you are here in a  
09:04:26 21 representative capacity, please include who you are  
09:04:30 22 providing testimony on behalf of.

09:04:32 23 Please also note that this hearing is convened to  
09:04:34 24 consider comments on the proposed rules. Because of  
09:04:37 25 the formal nature of this hearing, we are unlikely to

09:04:40 1 answer any questions you may ask. If you do pose a  
09:04:43 2 question, I will ask you to rephrase your question as  
09:04:46 3 a comment. Questions can be mailed to us at  
09:04:50 4 paidleave@esd.wa.gov, where our customer support staff  
09:04:57 5 will respond to your questions. Written comments on  
09:05:00 6 the proposed rules will be accepted through today by  
09:05:03 7 e-mail at rules@esd.wa.gov.

09:05:07 8 A Concise Explanatory Statement of the agency's  
09:05:10 9 reasons for adoption of the rules, including a summary  
09:05:14 10 and response to all comments received after the  
09:05:16 11 publication of the Proposed Rules, will be placed in  
09:05:19 12 the permanent rulemaking file and posted online. This  
09:05:22 13 document will be sent to all interested parties who  
09:05:25 14 have signed up to receive Paid Family and Medical  
09:05:28 15 Leave rules e-mails.

09:05:29 16 We will begin with Janette Benham, who will  
09:05:32 17 provide a brief explanation of the proposal.

09:05:37 18 MS. JANETTE BENHAM: Thank you, Jason.

09:05:39 19 The first rule in today's hearing modifies the  
09:05:42 20 definition of "Placement" for the purposes of  
09:05:44 21 qualifying for paid family leave. The amendment  
09:05:48 22 creates an alternate window of leave for employees who  
09:05:52 23 elect to take family leave to bond with a child placed  
09:05:52 24 in the home after an adoption has been legally  
09:05:56 25 finalized.

09:05:56 1           The second rule specifies when the department  
09:05:59 2           will publish certain judicial decisions relating to  
09:06:02 3           the program.

09:06:03 4           I encourage all of you to read the text of the  
09:06:05 5           rule, along with the supporting documents that are  
09:06:09 6           available on the rulemaking webpage, for a more robust  
09:06:12 7           understanding.

09:06:12 8           And thank you all for your interest and  
09:06:14 9           participation in our rulemaking efforts, and we look  
09:06:17 10          forward to hearing your comments today.

09:06:19 11           MR. JASON BARRETT: Thank you, Janette.

09:06:21 12           We will now hear testimony from those in  
09:06:23 13           attendance. I will go through each rule individually,  
09:06:26 14           outline the proposed amendments to each rule and  
09:06:29 15           accept comments on each rule.

09:06:31 16           All attendees are currently muted. If you wish  
09:06:34 17           to speak, you can unmute yourselves through your Teams  
09:06:37 18           window or by pressing \*6 if you are joining we phone.

09:06:41 19           When you testify, please speak clearly, state  
09:06:44 20           your name, spell your last name, and state whom you  
09:06:47 21           represent if you are here in a representative  
09:06:50 22           capacity.

09:06:51 23           When you finish testifying, please mute yourself  
09:06:53 24           through your Teams window or hit \*6 again on your  
09:06:57 25           phone.

09:06:57 1                   The first rule we will accept comment on is WAC  
09:07:01 2                   192-500-195 Placement.

09:07:07 3                   Currently, the window for family leave to bond  
09:07:10 4                   with a child placed in the home is limited to the  
09:07:13 5                   12-month period following the physical placement of a  
09:07:16 6                   child in an employee's home. With this amendment, if  
09:07:19 7                   the employee elects not to take leave in that 12-month  
09:07:22 8                   period, an alternate window of family leave is  
09:07:25 9                   available that is comprised of the 12-month period  
09:07:28 10                  following the date of the finalization of legal  
09:07:31 11                  adoption. Employees are only eligible for family  
09:07:34 12                  leave to bond with a child during one of these  
09:07:37 13                  windows, not both, and the maximum duration of leave  
09:07:40 14                  remains at 12 weeks.

09:07:44 15                  We are now ready to accept public comment on this  
09:07:47 16                  proposed rule change.

09:07:48 17                  Maggie Humphreys, I see your hand raised.

09:07:55 18                  MS. MAGGIE HUMPHREYS: Thank you. And thank  
09:07:56 19                  you to the ESD for convening today's hearing.

09:07:58 20                  For the record, my name is Maggie Humphreys. My  
09:08:01 21                  last name is spelled H-U-M-P-H-R-E-Y-S. And I'm here  
09:08:06 22                  representing MomsRising.

09:08:09 23                  We would like to share our support for this draft  
09:08:11 24                  rule and these changes to the placement procedure. I  
09:08:16 25                  want to thank the department for taking this on, and

09:08:18 1 also thank the foster to adopt families, some of whom  
09:08:23 2 are on the call today, who first raised this and  
09:08:26 3 experienced this gap in our paid leave system  
09:08:29 4 themselves, when unfortunately paid leave was not  
09:08:32 5 there to support their growing family due to a simple  
09:08:37 6 missing "or" in the statute.

09:08:39 7 So we appreciate this movement forward and the  
09:08:43 8 ability to serve more foster to adopt families with  
09:08:47 9 this small but very meaningful change to the language.  
09:08:51 10 Thank you.

09:08:53 11 MR. JASON BARRETT: Thank you, Maggie.

09:08:56 12 Are there any other comments on this rule?

09:09:13 13 (NO RESPONSE)

09:09:15 14 MR. JASON BARRETT: Hearing none, the next  
09:09:17 15 rule we will accept comment on is WAC 192-800-155 When  
09:09:23 16 are proceedings open to the public, and what  
09:09:25 17 information from a proceeding before the appeal  
09:09:30 18 tribunal or commissioner is publicly disclosable?

09:09:33 19 The current rule closes all appeals proceedings  
09:09:35 20 unless all parties agree otherwise. Decisions are not  
09:09:37 21 released to the public by the department.

09:09:39 22 In the interest of increased transparency, the  
09:09:42 23 department is proposing that a decision that is  
09:09:44 24 appealed to the commissioner's review office may be  
09:09:47 25 published at the department's discretion. If such a

09:09:50 1 decision is published, all personal identifying  
09:09:52 2 information concerning an individual or employer will  
09:09:55 3 be redacted.

09:09:55 4 In addition, if a decision is appealed to  
09:09:59 5 superior court, the department will file the record  
09:10:01 6 with the court unsealed, as required by RCW 34.05.566.  
09:10:08 7 Any interested party may move to seal those records  
09:10:11 8 under applicable court laws.

09:10:14 9 We are now ready to accept public comment on this  
09:10:18 10 proposed rule change.

09:10:42 11 (NO RESPONSE).

09:10:35 12 MR. JASON BARRETT: Does anyone wish to  
09:10:37 13 provide comments on this rule?

09:10:42 14 (NO RESPONSE).

09:10:49 15 MR. JASON BARRETT: Hearing none, I would  
09:10:51 16 like to open the floor for any further testimony from  
09:10:53 17 anyone on the phone before I conclude this hearing.

09:10:56 18 Does anyone wish to provide comments on either of  
09:10:59 19 the two rules being discussed today?

09:11:13 20 (NO RESPONSE).

09:11:17 21 MR. JASON BARRETT: One final call before I  
09:11:18 22 close the hearing. Any comments on either of these  
09:11:23 23 rules?

09:11:28 24 (NO RESPONSE).

09:11:30 25 MR. JASON BARRETT: In conclusion, this

09:11:34 1 hearing was convened to consider testimony on Paid  
09:11:39 2 Family and Medical Leave rulemaking.

09:11:40 3 All oral testimony presented at this hearing and  
09:11:43 4 written submissions will become part of the official  
09:11:47 5 record.

09:11:47 6 The deadline for submission of written comments  
09:11:50 7 is by the end of the day today, April 24, 2024. You  
09:11:54 8 may submit written comments by e-mailing  
09:11:57 9 rules@esd.wa.gov. Comments must be received by the  
09:12:02 10 end of the day to be considered part of this  
09:12:04 11 rulemaking.

09:12:05 12 A final decision regarding adoption of the  
09:12:08 13 proposed rules will be made after all testimony and  
09:12:11 14 written comments have been fully considered, which  
09:12:14 15 will be on or after May 14th, 2024. The planned  
09:12:18 16 effective date of any adopted rules will be June 14th,  
09:12:22 17 2024.

09:12:23 18 On behalf of Commissioner Cami Feek, thank you  
09:12:25 19 for participating in this hearing.

09:12:27 20 This hearing is hereby adjourned at 9:14 a.m. on  
09:12:33 21 April 24th, 2024.

22

23

(RULE MAKING HEARING

24

CONCLUDED AT 9:14 A.M.)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 24th day of April, 2024.

CERT/LIC NO. 2521 Dorene Boyle  
Certified Court Reporter in and for the  
State of Washington, residing at Yakima