

Washington State Family & Paid Leave
PFML Rulemaking Stakeholder Meeting
Licensed Naturopaths Rules Change

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Wednesday, November 6, 2024

9:02 a.m.

Olympia, Washington

1 APPEARANCES:

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3 FOR WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT
4 LEAVE AND CARE DIVISION:

5 MR. BRETT CAIN, Policy Analyst
6 MR. JASON BARRETT, Lead Policy Analyst
7 MS. JANETTE BENHAM, Rules Coordinator
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1 BE IT REMEMBERED that on Wednesday, November
2 6, 2024, commencing at 9:02 a.m., via Microsoft Teams,
3 Washington State Family and Paid Leave, PFML Rulemaking
4 Stakeholder Meeting, taken before Bethan Williams,
5 Certified Court Reporter in and for the State of
6 Washington.

7 The following proceedings took place:

8 MR. BARRETT: Good morning and welcome,
9 everyone. My name is Jason Barrett, and I am the
10 lead policy analyst for the leave and care division
11 at the Employment Security Department. There are a
12 few other members from the leave and care policy
13 and rules team on the call, and I'd like to ask
14 that they go ahead and introduce themselves now.

15 MS. BENHAM: Good morning. I'm Janette
16 Benham, and I am the rules coordinator for the
17 leave and care division here at the Employment
18 Security Department.

19 MR. CAIN: Good morning. I'm Brett Cain. I
20 work with Janette and Jason to promulgate rules for
21 the division. Welcome, everyone.

22 MR. BARRETT: All right. Thank you. We are
23 here this morning to review and discuss draft of
24 rule amendments that the Department is considering
25 regarding the Paid Family and Medical Leave

1 program. We will be discussing several topics
2 including the definition of healthcare provider,
3 application backdating, authorization of a
4 designated representative, employer damages, weekly
5 claim requirements, and a few other housekeeping
6 changes.

7 The draft that we will be reviewing and
8 discussing can be found at
9 paidleave.wa.gov/rulemaking. Again, that's
10 paidleave.wa.gov/rulemaking. If you look at the
11 current rulemaking subtitle, you can click on it
12 and you will see another subtitle called the
13 definition of healthcare provider, designated
14 representative, and other topics. You can expand
15 that list and click on each draft rule to see the
16 text of the proposed changes.

17 If you've called in for this meeting by phone,
18 please keep your mute on by using the mute function
19 on your phone or by pressing star six. Please keep
20 in mind that the subject of this call is the draft
21 rules documents that I just referenced. We will
22 not be discussing other rules, and if you have a
23 question before your claim or application, please
24 hang up and call our customer care team at (833)
25 717-2273.

1 I also want to ask that if you are commenting
2 on the draft rules to please state and spell your
3 name and indicate you are here on behalf of an
4 organization. And I again want to remind everyone
5 that this meeting is being recorded.

6 MS. BENHAM: Jason, I am not able to press
7 record, so if you could please start the recording,
8 that would be great.

9 MR. BARRETT: I can do that. Okay. Now I
10 would like to remind you that this meeting is being
11 recorded.

12 Before we open the floor for comments, I want
13 to give folks an opportunity to ask any questions
14 about anything I just said, why we're here, where
15 to find the draft rules, or any other general
16 questions about this meeting. Go ahead and unmute
17 using your computer or hit star six on your phone
18 if you'd like to ask any questions at this point.

19 (NO RESPONSE.)

20 MR. BARRETT: All right. With that, we will
21 move on to our first rule WAC 192-500-090
22 healthcare provider.

23 This amendment adds licensed naturopaths to
24 the definition of healthcare provider. This will
25 mean that naturopaths licensed under Washington

1 State law will be permitted to sign documentation
2 substantiating the presence of a serious health
3 condition for the purposes for paid family or
4 medical leave.

5 Are there any questions or comments on this
6 rule?

7 Edsonya Charles, our ombuds, I see your hand
8 raised.

9 MS. CHARLES: Good morning, Edsonya Charles.
10 E-d-s-o-n-y-a C-h-a-r-l-e-s, Paid Family Medical
11 Leave ombuds. I am happy about the proposed change
12 to healthcare professionals. I would just ask the
13 Department to look at further expansion, especially
14 in the mental health field given the lack of mental
15 healthcare providers in the state and the specialty
16 terms in Washington for people who are able to
17 provide that care.

18 MR. BARRETT: Thank you, Edsonya. We
19 appreciate that feedback. I thought I saw another
20 hand raised. Oh, Angela Ross, yes.

21 MS. ROSS: Hi, I'm Dr. Angela Ross, I am a
22 licensed naturopathic physician here in Washington
23 State, I'm also the executive director of the
24 Washington Association of Naturopathic Physicians
25 and I just -- I really want to thank your team for

1 engaging in this rulemaking.

2 This sort of strange -- it hadn't been a
3 problem for a long time, and then we've started to
4 hear from some of our doctors who, you know, are
5 serving in the primary care capacity and have
6 patients who have either had their claims denied or
7 have been asked for more information, and we really
8 appreciate -- we've been working with your team to
9 just try to kind of do a little bit of a stopgap.
10 But including us in this rule is incredibly helpful
11 and will really help a lot for the patients that
12 choose naturopathic physicians as their primary
13 care provider.

14 So thank you, thank you, thank you. I just
15 wanted to make sure that we weighed in in strong
16 support of this change, and thank you.

17 MR. BARRETT: Thank you very much for that.
18 We appreciate it.

19 Any other questions or comments on this rule?
20 Jacob, yes.

21 MR. KIERSTEAD: Yeah, name is Jacob Kierstead
22 and I happen to work in leave of absence approvals
23 and helping employees go through the -- you know,
24 through filing for leave and those sorts of things.

25 One of the biggest things when we come to the

1 change of provider definitions that I hope everyone
2 keeps in mind is that any time that you're not
3 aligned with FMLA in terms of the definitions, that
4 means you'll get approvals from the state, but
5 you'll get denials from the federal FMLA policy,
6 and that creates considerable amount of confusion.
7 That also puts employers at risk if they're just
8 going off of WPFL approvals. And also too, it
9 really confuses people out there.

10 Leave of absence is an incredibly confusing
11 topic, and the more different definitions you have
12 all over the place, the more people don't
13 understand what they can do and can't do.

14 So, anyways, for the rulemaking committee, you
15 know, just please keep that in mind that even
16 sometimes with the best intentions of doing things,
17 you actually create more confusion out in people
18 understanding what they're actually allowed to
19 take.

20 MR. BARRETT: Thank you for that, Jacob. Was
21 there a particular organization that you are
22 speaking on behalf of?

23 MR. KIERSTEAD: No. Just somebody who's in
24 the industry who helps people with Washington Paid
25 Leave -- you know, protecting their time and stuff.

1 MR. BARRETT: Great. Thank you.

2 Any other questions or comments regarding this
3 rule?

4 (NO RESPONSE.)

5 MR. BARRETT: Seeing none, we will move on to
6 WAC 192-500-200 pandemic leave assistance. This
7 represents the first of three rules related to the
8 pandemic leave absence grant program that the
9 Department is proposing to repeal with this
10 package.

11 Pandemic leave assistance grants were approved
12 by the legislature in 2021 in response to the
13 COVID-19 pandemic. The grants were available as an
14 alternative route to benefits for individuals whose
15 employment had ended due to the pandemic.

16 The program has expired. It expired some time
17 ago, and the associated rules are no longer
18 necessary as a result of the expiration of the
19 grants. So we are proposing that these rules be
20 repealed.

21 Are there any questions or comments on this
22 rule?

23 (NO RESPONSE.)

24 MR. BARRETT: Moving on to WAC 192-510-031,
25 what are reportable wages for self-employed

1 electing coverage? This rule is actually not
2 changing in any practical way. We are amending an
3 example in this rule. This represents efforts to
4 maximize program exclusivity by using gender
5 neutral pronouns in our rules. The language in the
6 examples here do use gender specific pronouns which
7 we are addressing with this change to replace them
8 with gender neutral pronouns.

9 Are there any questions or comments on this
10 rule?

11 Yes, Jacob.

12 MR. KIERSTEAD: Just that the population that
13 doesn't identify by standard pronouns and the
14 removal of gender specific language is greatly
15 appreciated, and this is much needed work.

16 MR. BARRETT: Thank you, Jacob. We appreciate
17 that.

18 Any other questions or comments?

19 (NO RESPONSE.)

20 MR. BARRETT: Moving on to WAC 192-530-100,
21 are voluntary plans required to pay pandemic leave
22 assistance benefits? This is the second of three
23 rules that the Department is proposing to repeal
24 because the associated program is no longer
25 available.

1 Are there any questions or comments on this
2 rule?

3 (NO RESPONSE.)

4 MR. BARRETT: Moving on to WAC 192-570-050,
5 how are damages and liquidated damages assessed by
6 the Department awarded and paid?

7 Washington State law requires the Department
8 to assess interest on damages determined to be owed
9 by an employer to an employee when they have
10 violated the law, but it does not specify the
11 precise amount of that interest. This rule sets
12 that at 1 percent per month which is consistent
13 with the interest rate assessed on late premium
14 payments.

15 Are there any questions or comments on this
16 rule?

17 (NO RESPONSE.)

18 MR. BARRETT: Hearing none, we can move on to
19 WAC 192-610-040, can an employee backdate an
20 application or weekly claim for benefits?

21 The current wording of the rule requires
22 employees to submit their application within seven
23 days of the date on which the factors that
24 constitute good cause that prevented the employee
25 from applying sooner are no longer present. This

1 is actually a significantly shorter deadline than
2 we allow for general purpose backdating which is
3 set at 30 days by operational policy.

4 So this change will create consistency across
5 all of our backdating time lines.

6 Are there any questions or comments on this
7 rule? Yes, Jacob.

8 MR. KIERSTEAD: Yeah, any time that you're
9 allowing such significant backdating what you are
10 doing is otherwise kind of jeopardizing potential
11 employment actions that have otherwise occurred.
12 This creates a large amount of risk on, you know,
13 manager's side who operate in good faith and may
14 have terminated somebody.

15 So if you're allowing such a widespread of
16 backdating for claims and approvals and those sort
17 of things, you have to let employers know, like,
18 instantly that that -- stuff like that has
19 otherwise happened. And it's -- it's a concern
20 when you allow such a gap of, you know, 30 days
21 later, how much happens in 30 days, right? Like, a
22 lot, a lot happens.

23 So, you know, as somebody who sees the -- you
24 know, and works with employees and works with
25 managers in those sorts of things, having strict,

1 reasonable deadlines is -- keeps everybody on the
2 right path. They make it a priority rather than,
3 oh, I can just file for it later. And so, anyways,
4 they wait three weeks and then you go in and a
5 manager goes, okay, I haven't gotten anything. You
6 haven't provided me anything. Here you go. Here's
7 your pink slip, and then three days later, you're
8 sending in a -- you know, an approval or a filing
9 or those sorts of things that just generates
10 litigation, and it just generates risk across the
11 board.

12 So, anyways, personally that's a concern that
13 I see.

14 MR. BARRETT: Thank you, Jacob. We appreciate
15 that feedback.

16 Jennifer, I see your hand.

17 MS. MERTEL: Hi, thank you. My name's
18 Jennifer Mertel. I just had a question, if you
19 could reread that, am I understanding that
20 correctly then that employees have to apply within
21 seven days or it's just the backdating of their
22 applications?

23 MR. BARRETT: So we -- through operational
24 policy, we allow 30 days of backdating with no
25 questions asked. For the purposes of submitting

1 the application, this rule is -- was written kind
2 of before that operational policy went into effect,
3 and this WAC -- changing this WAC will bring this
4 particular instance in line with general Department
5 policy around backdating with no questions asked.

6 So it was noted that our good cause policy was
7 more strict than our no questions asked policy.
8 And this is intended to address that.

9 MS. MERTEL: Okay. Thank you.

10 MR. BARRETT: Any other questions or comments
11 on this rule?

12 (NO RESPONSE.)

13 MR. BARRETT: Hearing none, moving on to WAC
14 192-610-100, what is the attestation required for
15 an employee claiming pandemic leave assistance?

16 This is the third of three rules that the
17 Department is proposing to repeal because the
18 associated program is no longer available.

19 Are there any questions or comments on this
20 rule?

21 (NO RESPONSE.)

22 MR. BARRETT: Moving on to WAC 192-620-020,
23 what information will the Department request from
24 an employee when filing for weekly benefits? This
25 is the first of two rule changes that bring our

1 WACs into closer alignment with RCW and Department
2 practice, which specifies that employees must
3 report hours worked in self-employment when they
4 are filing their weekly claims.

5 This change has no practical effect because
6 the Department already notifies employees of this
7 requirement pursuant to RCW requirements. But our
8 rule was missing the specific reference to those
9 hours worked in self-employment, in addition to
10 hours worked for wages at an employer.

11 Are there any questions or comments on this
12 rule?

13 (NO RESPONSE.)

14 MR. BARRETT: Moving on to WAC 192-620-020,
15 what information will the Department request from
16 an employee when filing for weekly claims?

17 This is the second of two rules changes
18 pertaining to reporting hours. It's the same
19 practical impact, just a different rule.

20 Are there any questions or comments on this
21 rule?

22 (NO RESPONSE.)

23 MR. BARRETT: Moving on to WAC 192-800-150,
24 can an employee designate a representative to act
25 on their behalf?

1 This change is designed to allow flexibility
2 in what is required to designate another individual
3 to act on the employee's behalf when interacting
4 with Paid Family and Medical Leave. This change
5 does not immediately alter any requirements, but it
6 will allow the Department to explore scenarios in
7 the future in which a verbal authorization may be
8 sufficient rather than requiring written
9 documentation in all cases.

10 Are there any questions or comments on this
11 rule?

12 (NO RESPONSE.)

13 MR. BARRETT: That was the final rule in this
14 package.

15 Are there any questions or comments pertaining
16 to any of the draft rules that we have discussed
17 here today?

18 (NO RESPONSE.)

19 MR. BARRETT: One final call for questions or
20 comments about any of today's rules.

21 (NO RESPONSE.)

22 MR. BARRETT: Well, with that, we will go
23 ahead and close out. Thank you very much for the
24 comments and discussion this morning. Regarding
25 next steps, we will gather all of the comments that

1 we've received on these amendments to determine
2 which should be incorporated, then draft paperwork
3 to formally propose rule language.

4 Once the proposed rules and paperwork are
5 filed, individuals will have an opportunity to
6 participate in the public hearing and provide
7 written comments up to and through the day of the
8 hearing. Following the hearing, if no substantive
9 changes to the amended rules are necessary, we will
10 file paperwork providing a response to each comment
11 received during the comment period and hearing and
12 then adopt the rules.

13 Please visit paidleave.wa.gov/rulemaking for
14 more information on when these next steps will
15 occur. And if you haven't already signed up to
16 receive rulemaking notifications, you can do so at
17 that website.

18 If you have any comment or questions, please
19 feel free to send us an e-mail at rules@esd.wa.gov.
20 Again, that's rules@esd.wa.gov.

21 Thank you so much for joining us this morning,
22 and we hope you enjoy the rest of your day.

23 (Hearing concluded at 9:22 a.m.)

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CERTIFICATE

I, BETHAN WILLIAMS, a Certified Court Reporter in and for the State of Washington, residing at Vancouver, do hereby certify;

That the foregoing proceedings were taken before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true, and complete transcript of said proceedings;

That as a CCR in this state, I am bound by the Rules of Conduct as Codified in WAC 308-14-130; that court reporting arrangements and fees in this case are offered to all parties on equal terms.

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2024.



Bethan Williams, RSR, WA CCR #8344