

Advisory Committee Meeting- 12/18/2024

Attendance

Committee Members Present

- Beth Marchand, Interim Director ESD Leave and Care
- Edsonya Charles, PFML Ombuds

Employee Representatives

- Samantha Grad, Teamsters 117
- Maggie Humphries, Moms Rising
- Gabriela Quintana, Economic Opportunity Institute

Employer Representatives

- Rose Gundersen, Washington Retail Association
- Lindsey Hueer, Association of WA business
- Julia Gorton, Washington Hospitality Association
- Tammie Hetrick, WA Food Industry Association

ESD Staff

- Cami Feek, ESD Commissioner
- Alison Eldridge, Deputy Director Leave and Care
- John Mattes, Assistant Director Leave and Care
- Josh Dye, Interim Director Government Relations
- Matt Buelow, Customer Compliance Director
- Cezanne Levesque, Leave and Care Transformation Manager
- Nicole Ross, Employer Customer Service Manager
- Eve Sheng, Managing Actuary
- Rebecca Grady, Leave and Care Research& Data Manager
- Jason Barrett, Lead Tax Policy Specialist
- Amanda Siemandel, MA3- running slides
- Erika Ayala, Administrative Assistant 4- taking notes

Agenda

- *Introductions and approval of September and October Minutes*
- *Director Update*
- *UW job protection report*
- *JLARC report*
- *Legislative Update*
- *Open comment*

Introductions & approval of September Minutes

DISCUSSION	Start time 1:00pm
<ul style="list-style-type: none">• Julia Gorton motions to approve September and October• Samantha Grad motions 2nd to approve• All in favor to approve September and October meeting minutes	

LCD Director Update

NAME	Beth Marchand
<ul style="list-style-type: none">• Director hiring<ul style="list-style-type: none">○ We have completed the 2nd round interviews as of 12/17/24○ We are hoping to have someone hired in February○ 1st round interviews were more of the technical interviews○ 2nd round interviews included Paid Leave and WA Cares representation• Budget freeze directive<ul style="list-style-type: none">○ There was a budget freeze implemented by the Governor starting on 12/2/24○ This included hiring, service contracts, equipment purchases and travel○ We have around 70 open positions and we are actively reviewing all these positions individually to see if they meet the exception/ exemption criteria○ We are currently waiting for more information and guidance around the exception and exemption process• Governor's proposed budget<ul style="list-style-type: none">○ The Governor's budget was released 12/17/23○ We did get half of what we asked for and it was mostly for or direct line customer service positions○ We also did get a portion of our Customer Compliance budget funding○ We also did get full budget support in the carryover of our PFML system completion ask	

WA Paid Leave and Job Protection- Final report

NAME	Dr Heather Hill, Evans School of Public Policy and Governance, University of Washington
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The Study

- ESSB 5187, Section 225(22) allocated funds to study WA Paid Leave and job protection
- This was conducted by a UW team under contract with ESD
- Data was shared between ESD and UW at the UW Data Collaborative under a data sharing agreement

Job Protected leave, what is it?

- Time off from work to care for self or family member in which the worker is legally guaranteed the right to return to the same or an equivalent job after the leave period has ended

Job Protection with WA Paid Leave- specifically focused on WA PFML Job Protection

- WA Paid Leave offers job protection if the leave user:
- works for an employer with 50+ employees in Washington
- for at least 1 year and 1,250 hours.
- It is not given to all WA state employees
- The first step was to do a review of other protective leave sources and examine our roles in job protection against other states that also have PFML programs
- Among the 13 other states that offer Paid Leave programs, WA restricts job protection the most, especially for family leave

Research Questions

- What percentage of workers covered by WA Paid Leave are estimated to have job protection?
- Does job protection relate to take- up of WA Paid leave, employment after leave, or UI receipt after leave?
- What do workers know and think about protected leave?

Research Activities

- *Program data analysis*
- WA Paid Leave quarterly wage reports from employers
- WA Paid Leave claims data
- Unemployment insurance claims data
- *Original data collection from workers*
- Interviewed 31 WA Paid Leave users
- Conducted 2 focus groups with workers who had not used the program in Yakima & Pierce Counties
- Looked at hours worked, tenure with employer, salary, etc
- The benefit of having access to WA Paid Leaves Claim data, we were able to look at some demographic information provided like race/ethnicity, gender, etc.
- Among leave users, there is no large differences in of protection by gender or race/ethnicity
- Job protection is associated with a 0.7 percentage point difference in the likelihood of using leave
- Job protection is positively associated with employment after leave, especially for lower earning workers
- Over 70% of employees returned to employment after taking leave
- Job protection is negatively associated with UI receipt

WORKER UNDERSTANDING OF JOB PROTECTION IS OFTEN VAGUE

- Most know about the general idea of job protection
- There is confusion about the source of job protection while on WA Paid leave
- There is confusion about eligibility for WA Paid Leave benefits versus job protection
- Few had discussed job protection with supervisor, HR staff, or other authority at work
- Several doubted that job protection could be enforced

- There was more doubt around job protection those not taking leave than those who are taking leave

Sense of job security for workers is broader than Legal Job Protection

- Those who had taken leave did NOT describe job protection as a key factor in the decision to take leave
- Often the health situation was too urgent
- Some felt security from long tenure, knowing their value and trusting their employer
- Those who had not taken leave could not imagine feeling secure enough to do so
- Recommendations
- Expand eligibility for job protection to increase equitable access to the program. Put us more in line with what other states have done for job protection but also is consistent with the mission of this program. Job protection is associated positively with this program
- Provide more direct communication to workers and employers about job protection as a distinct component of WA Paid Leave
- Consider giving ESD authority and resources to collect data from employers about post-leave employment

- Rose Gundersen- Using statistical research principles, is the 0.7 difference statistically significant?
- Heather Hill- Yes, it is statistically significant, in the final report, it is displayed more significantly. There are two ways of showing statistical significance- translate that into error in each estimate and if you see error overlapping, they are not statistically significant, and the other way is the t test.
- Can you provide an explanation in an e-mail?
- Heather Hill- It is all detailed in the appendix in the final report
- Heather Hill- "Limitations are all detailed and mentioned in the final report, while I understand your view, I am very intentional in the wording and report findings."
- Maggie Humphries- Could the marginal impact on returning to the same employer be connected to the tight labor market?
- Heather Hill- We didn't explicitly look at whether that varied by UI rate in a quarter. We are covering a period of time where UI did fluctuate a bit, so it wasn't totally marginally tight, and we do avoid any full on recessionary periods.
- Heather Hill- One thing we see here is that most workers are returning to work after leave, leave promotes the return to work and attachment to the labor force. Because so many people already return, job protection may not have as much of a part in that decision to return. Other workers are not talking about job protection as a major concern in taking leave, its more around their sense of worth, tenure and other things that are taken into consideration. Some don't even believe that this job protection can be enforced.
- Maggie Humphries- It is interesting that many workers are leaning into their employer for support in returning but are these presumptions best serving the employees?

JLARC

NAME	Zack Freeman and Joshua Karas
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Legislative Auditors Conclusion

- PFML expenses are likely to continue to exceed revenues in future years.
- Changes to the rate formula could make the program more stable and promote financial sustainability.

ESD staff process applications and answer phones

- *Applications*
- Initial benefit applications
- Weekly claims
- *Phones*
- PFML call center
- *PFML staff member assignments*
- Application 4days/week
- Phones 1day/week
- In 2024, the legislature provided funding for an additional 39 FTEs
- *Number of application and the percent approved increased each year from 2020 to 2023*
- Applications- Increased by an average of 15% each year
- Approved Applications- Increased from 81% to 87% from 2020 to 2023
- Employees wait two to four weeks for their benefit payment
- ESDs informal target is 3 weeks of being paid from the time the application was received to payment
- *Phone tree breakdown*
- Call comes in-Queue-Speaks to customer service or abandoned by caller
- Other option is, Call comes in- Disconnected by system
- *PFML call volume has increased*
- The average number of calls per month in 2022 was 47K
- The average number of calls per month in 2024 is 78K
- *Performance has declined*
- ESD answered 23% of the total calls between January and June 2024
- More than 6 in 10 calls were disconnected
- In 2022, 60% of total calls were answered and 19% were disconnected
- ESD lacks formal performance measures
- This makes it difficult to assess operational strategy and performance
- ESD prioritizes processing benefit applications rather than phones
- Other state Paid Leave programs have adopted performance measures

Legislative Auditor's Recommendation

- *ESD should adopt quantifiable customer-oriented performance measure for claims processing and call center management*
- Best practice is to establish specific and actionable performance measures
- In developing these measures, ESD should conduct outreach to its customers and stakeholders

Premium rates are currently set by the statutory formula

- Fixed rate statute 2019-2020, Set by legislature
- Statutory Formula 2021-2023, Based on account balance ratio
- New statutory formula 2024, Based on expenses from prior year
- Current Formula $140\% \times \text{Program Expenses} - \text{Account Balance} / \text{Covered Wages}$
- The rate is subject to two conditions- Rate cap: 1.20% and Reserve cap: 3 months of expenses

- 2024s rate was dependent on the cash infusion given
- The \$278 million was used in the formula to calculate the following years rate(2025)
- Rate formulates have not produced enough revenue
- Negative net income in 2021 and 2022
- Consulting actuary- Expenses are likely to exceed revenue in 3 of the next 5 years

Statutory Rate formula has contributed to insolvency

- Backward-looking formula reduces flexibility
- Reserve cap can only reduce the rate
- ESD: Negative balances likely over the next two years

Consulting actuary recommends

- Using a forward-looking rate setting approach
- Maintaining a sufficient reserve to cover shortfalls

Legislative Auditor makes one recommendation to the Legislature

- *The legislature should implement a forward-looking rate-setting approach that maintains a sufficient financial reserve*
- Best practices recommend incorporating the following into the process:
- Trends in claim experience
- Potential future economic shifts
- Demographic changes

ESD yet to implement key program elements- Paid Leave Balance of Work

- *Examples*
- Automate match between PFML and UI claims crossmatch
- Address benefit overpayments
- Assess penalties & interests
- Make conditional benefit payments

ESD has a formal process for prioritizing projects

- 3 priority buckets- Now, Next, Later
- The Now projects are assigned by a project manager
- The Next projects are reviewed and assessed according to 15 factors for impact and effort

Certain areas do not align with best practices

- Buckets- ESD lacks documented procedures and transparent criteria
- Assessments- Factors are equally weighted which obscures risk and creates a narrow band of scores

Legislative Auditor's recommendations

- *ESD should develop a documented and transparent process for prioritizing projects*
- Project assessments should be updated to accurately reflect the relative risk of each project

PFML Compliance Framework

- Fraud- Detects and investigates imposter & benefit fraud
- Unlawful Acts- Investigates claims of unlawful acts by employers
- Employee Audits- Checks for proper withholding and reporting

ESD identified errors in 96% of audits in 2023(ESD completed 169 audits in 2023)

- Reporting Errors- \$48,000 in overpayments and \$283,000 in underpayments
- Audit rate: 0.08%- 169 of 200,000 employers audited
- Educational audits- ESD's systems are unable to levy fines, this is a functionality that is a part of the Balance of Work

Employer audit procedures are not aligned with best practices

- Audit assignment criteria-Example: employer size
- Percentage of employers audited- Example: U.S. DOL requires 1% for UI

Legislative Auditor's Recommendation

- *ESD should adopt criteria for its employer audit program*
- Best practices include; Assigning audits based on specific criteria (e.g., employer size) and determining the percentage of employers that will be audited each year

Medical leave including childbirth, made up just over half the applications

- Medical leave- 53% (medical-36% and childbirth-17%)
- Family leave- 47% (bonding- 34% and family care- 13%)

Applications differ by gender

- Medical Childbirth- 99% female
- Medical- 59% female and 39% male

- Family leave military- 91% female and 9% male
- Family care- 61% female and 38% male
- Family leave bonding- 46% female and 54% male

Employees using PFML have comparable income to eligible population

- Median income of employees using PFML: \$66, 000
- Median income of eligible employees: \$64,000

Race and ethnicity of employees using Paid Leave is like that of the eligible population

- *Employees using PFML*
- American Indian or Alaska Native 1%
- Asian 8%
- Black or African American 5%
- Hispanic or Latino of any race 16%
- Native Hawaiian or Pacific Islander 1%
- Two or more races 4%
- Other 1%
- White 61%
- *Estimated eligible population*
- American Indian or Alaska Native 1%
- Asian 10%
- Black or African American 4%
- Hispanic or Latino of any race 13%
- Native Hawaiian or Pacific Islander 1%
- Two or more races 5%
- Other 0%
- White 66%
- Julia Gorton- I am curious if we have done modeling on the type of formula described in the report to set rates or how they would be affected using this model?
- Eve Sheng- We do have actuarial models to do forward-looking rate but its not in an ideal stage for use currently.
- Maggie Humphries- For other states that have PFML programs, do they use this model or ours?
- Zack Freeman- 7 of 9 states use an actuarial or forward-looking model to set rates
- Tammie Hetrick- When you did the audit of fraud, did you just look at Employer fraud or also Employee fraud, is there a recommendation to do cross matching with UI/LNI/DSHS?
- Zack Freeman- We didn't look in depth to employee fraud or into crossmatching specifically
- Beth Marchand- We have submitted our formal response to JLARC and we concur with the findings/recommendations
- **View full report at <https://leg.wa.gov/jlarc>**

Legislative Update

NAME	Josh Dye, Interim Director Government Relations
<ul style="list-style-type: none">○ Reports published○ November 1, 2024- Actuarial Report○ December 1, 2024- Annual Report○ Preparing for session○ No agency requested legislation○ Pre-filed bills○ Governor's proposed budget	

Next meeting

NAME	2-3pm on Wednesday, January 22, 2025
<ul style="list-style-type: none">● Proposed Topics○ Program performance targets○ Paid Leave Annual Report presentation○ Possibly add some things about the official JLARC response as well○ Put together a 2025 proposed meeting calendar that was sent with the Advisory Packet of materials 12/13/24	

Open Comment

NAME	
<ul style="list-style-type: none">● No open comments● Adjourn at 2:11pm	