

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT
BEFORE THE RULES COORDINATOR
LEAVE AND CARE DIVISION

VERBATIM RECORD OF PROCEEDINGS
RE WASHINGTON PAID FAMILY AND MEDICAL LEAVE RULEMAKING
Tuesday, August 28, 2025
Olympia, Washington

APPEARANCES:

PRESIDING OFFICER: JASON BARRET
Lead Policy Analyst

ALSO PRESENT: JANETTE BENHAM
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1 MR. JASON BARRETT: Good morning and welcome, everyone.
2 My name is Jason Barrett, I'm the lead policy analyst for
3 the Leave and Care Division at the Employment Security
4 Department. There are a few other members from the Leave
5 and Care Policy and Rules team on the call, and I'll ask
6 that they go ahead and introduce themselves now, please.

7 MS. JANETTE BENHAM: Good morning. I'm Janette Benham,
8 and I am the rules coordinator for the Leave and Care
9 programs here at Employment Security Department. Welcome.

10 MR. BRETT CAIN: Good morning. I'm Brett Cain. I work
11 with Jason and Janette promulgating rules for the division
12 here at ESD. Welcome, everyone. Good morning.

13 MR. JASON BARRETT: Thank you very much. We are here
14 this morning to review and discuss rules for the
15 implementation of two bills. The first is SB 5191, which
16 addresses employer responsibilities as they relate to
17 dockworkers in Washington State. And the second is HB 1213,
18 which modifies several provisions of PFML, including small
19 business grants, job protection, and a few other topics. I
20 know from some of the conversations that I've had with
21 employers up to this point that job protection is of
22 particular interest, and I'm sure you may have noticed that
23 the draft rules on that topic are a bit light. That is
24 actually by design.

25 We really value these stakeholder meetings and we

1 recognize that the new provisions related to managing the
2 stacking of leave under various programs as well as the
3 notices that are required by 1213 are going to be very
4 intensive for employers to operationalize and implement.
5 And what I am hoping to get out of this meeting is a sense
6 of what guidance employers are hoping for when it comes to
7 the implementation of this bill. As I said, this is going
8 to fall a lot on employers and we need to know what you want
9 to know so that we can form our rules in such a way that can
10 be the most helpful to our employer community as they work
11 to implement the provisions of this bill.

12 So what I would like to do is, the text of the rules
13 that we have drafted can be found at
14 paidleave.wa.gov/rulemaking. Again, that's
15 paidleave.wa.gov/rulemaking. If you look at Current
16 Rulemaking, the subtitle is called Implementation of 2025
17 Legislation. Under that heading, you can click on each
18 draft rule to see the text of the proposed changes.

19 If you called in for the meeting, please keep your mute
20 on by using the mute function on your phone or by pressing
21 star 6. Please do keep in mind that the subject of this
22 call is the draft rules and potential rules for 1213 that
23 were just referenced. We are not discussing any other rules
24 that are not related to these two bills. And if you have
25 questions about PFML in general or your specific claim,

1 please hang up and call our Customer Care team at (833)
2 717-2273. I also want to ask that if you're commenting on
3 the draft rules to please state and spell your name and
4 indicate if you are here on behalf of an organization or if
5 you are simply here on behalf of yourself. And I again want
6 to remind everyone that this meeting is being recorded.

7 We're going to start by reviewing the drafts of the
8 rules that have been written and posted online. We're going
9 to go through each rule and I will solicit feedback on each
10 of these rules. And after we kind of move through that
11 process of the rules that have been drafted, I want to open
12 up the floor and have kind of an open forum about -- I mean,
13 any topic really that are pertaining to the rules. But I
14 think specifically what I would hope to discuss is what
15 rules or guidance that employers would hope to see from the
16 Department when it comes to implementing anything in these
17 two bills, but I think specifically the job protection
18 provisions of 1213 and the associated notices.

19 Because I know even in just the week since we've posted
20 the draft rules we've gotten lots of questions about, are
21 there going to be more rules around job protection and the
22 notices and stacking with FMLA? And I am really eager to
23 hear from our employer representatives that are with us here
24 today about what guidance they would hope to see from us on
25 that topic.

1 So before we kind of start moving through these rules,
2 I want to open the floor to ask any questions about anything
3 that I just said, why we're here, where to find the draft
4 rules or any other kind of just questions in general about
5 the process and what we're here to discuss today.

6 Is everyone kind of clear on sort of the agenda and the
7 intent of today's meeting? Go ahead and raise your hand or
8 just unmute yourself and speak.

9 Yeah. Oh, Sandra, I saw your hand for a moment.
10 Summers, I'm sorry, Connie?

11 MS. CONNIE SUMMERS: Yes, I was just raising my hand
12 actually to say that I understand, so no question just yet.

13 MR. JASON BARRETT: Great. LaDonna Spencer, I see your
14 hand. LaDonna, if you were speaking, you are on mute, just
15 so you know.

16 MS. LADONNA SPENCER: I don't have any questions
17 either. Just raising my hand.

18 MR. JASON BARRETT: Okay.

19 MS. ANN HENNINGER: This is Ann from OMC on the phone.
20 I am from Olympic Medical Center. Hi. I understand what
21 you're saying and I just wanted to raise the point hoping
22 you'll address it. One of our points of confusion is what
23 happens if there's a leave that spans 2025 into 2026? Do
24 the new rules apply to that? So I'm hoping you can address
25 that when we get to the question part. I hope that made

1 sense.

2 MR. JASON BARRETT: Yeah, it makes perfect sense. And
3 I've gotten that question and I'm happy to address it once
4 we kind of move through the draft rules and we kind of open
5 it up a bit. So I'll be happy to address that.

6 MS. ANN HENNINGER: Perfect. Okay, thanks. I'm
7 looking forward to the discussion. Thank you.

8 MR. JASON BARRETT: Thank you. Patricia?

9 PATRICIA ZUNIGA: Hi. I will have comments for later
10 on, but I wanted to ask during this preliminary kind of
11 agenda-setting time, and maybe you're going to address it
12 later, but would you be able to provide the timeline for
13 when you're going to release the next batch of rules and
14 when the final rules will be filed and take effect?

15 MR. JASON BARRETT: Yeah, that's a great question. I
16 think a lot of the remaining timeline depends on, I mean, to
17 be honest, a lot of what we hear today. I think before we
18 file our sort of final proposed rules, we want to make sure
19 that the rules that we draft address the concerns that we
20 are hearing, and we want to make sure that those rules are
21 properly stakeholdered, and we want to make sure to give
22 folks an opportunity to provide feedback and let us know
23 what they think. So I think next steps are kind of TBD.

24 The rules have to be in place and effective by January
25 1st. So we do -- there are ways to kind of file the final

1 set of rules, the CR 103, you know, as late as late
2 December. Because we have a legislative deadline, we are
3 not necessarily subject to that 31-day requirement that a
4 lot of rules are subject to. So we have time to receive
5 feedback and discuss feedback and implement any changes that
6 we want to make.

7 So yeah, I think the timeline that we're going to be
8 working off of is largely based on how comfortable folks are
9 with the rules that we are drafting. That's not like a
10 super-specific question, I mean answer, but I'm hoping that
11 we are being appropriately flexible so that we can make sure
12 that everyone's ready to go for when this bill goes into
13 effect in January. Brett?

14 MR. BRETT CAIN: I just wanted to add also that there's
15 still a formal process coming forward where everyone will
16 have a chance to provide comment. Regardless, we need to --
17 to get these rules into place, we still need to file
18 proposed rules, and then there's a formal comment period,
19 and there will be a hearing where people will get together
20 in a forum like this that's a little more formal where
21 people will have a chance to provide comment. And the law
22 also requires us during that formal comment period to
23 provide a response to all those comments. So there's
24 definitely more to come.

25 MR. JASON BARRETT: Thank you, Brett.

1 MS. JANETTE BENHAM: Jason, I don't know if you can see
2 this. There's two additional people with their hands up.
3 Connie?

4 MR. JASON BARRETT: Yeah, Connie and LaDonna spoke
5 earlier, so I think maybe their hands are still just raised.
6 Unless they have other questions.

7 Connie, I'm going to assume that your hand is just
8 still raised from before, but if that's not correct, then
9 please let me know.

10 MS. CONNIE SUMMERS: Yeah, it's still stuck up. Let me
11 see if I can make it go down. Okay, I think I have.
12 Thanks.

13 MR. JASON BARRETT: Thanks. Emily from HCA.

14 MS. EMILY DUCHAINE: Hey. Emily Duchaine, HCA. I'm
15 here on behalf of myself and the agency. Hi, Jason. Just
16 really quick, two questions. How long is this? Because I
17 only have an hour, so I just want to keep that in mind.

18 MR. JASON BARRETT: We're scheduled to go until 10:30,
19 but we can certainly wrap early if we move through
20 everything.

21 MS. EMILY DUCHAINE: No worries. And also, are you
22 going to be covering maintenance of health benefits in this
23 meeting today?

24 MR. JASON BARRETT: We do have a draft rule that
25 addresses the change in 1213 that we will be discussing as

1 we move on.

2 MS. EMILY DUCHAINE: Perfect. Thank you so much.

3 MR. JASON BARRETT: Sure. All right, why don't we go
4 ahead and start moving through the draft rules that we do
5 have. Just as a quick reminder, the draft rules can be
6 found at paidleave.wa.gov/rulemaking, and it's right at the
7 top of the page, so you should be able to find it fairly
8 easily there.

9 The first rule that we have drafted is WAC 192-500-010,
10 which is the Definition of employer. This is really
11 actually the only rule that is associated with the passage
12 of SB 5191 which speaks to what entity is considered to be
13 the employer as it relates exclusively to Washington
14 dockworkers. Again, this is separate from 1213. This is
15 not related to PFML job protection or small business grants
16 or any of the other provisions in 1213. This is an
17 administrative rule that essentially names certain entities
18 as the employer for the purposes of those responsibilities
19 related to Washington dockworkers.

20 Are there any questions or comments on this rule?

21 (No response)

22 MR. JASON BARRETT: Seeing none, we will move on to WAC
23 192-510-040, How does an employer's size affect liability
24 for premiums and eligibility for small business assistance
25 grants? And WAC 192-510-050, How will the Department assess

1 the size of new employers? Part of the changes of HB 1213
2 were that it implemented a change in how the Department will
3 calculate an employer's size for the purposes of premium
4 liability and small business grant eligibility.

5 The new method of counting requires an employer to
6 submit to the Department an employee count based on the
7 number of employees in employment on the last day of each
8 quarter. The Department will average that number across the
9 previous four quarters to determine an employer's size for
10 the subsequent calendar year.

11 This change mostly impacts employers who felt that
12 their size was being artificially inflated by how we
13 currently count employees, which is to average all employees
14 who received wages during that four-quarter period. So a
15 lot of employers felt that it kind of bumped them up into
16 that new class size, because if there was one position, you
17 had one employee leave and another one come in, that would
18 technically count as two employees on the quarterly report
19 even though one employee was ever actually filling that
20 position at any one time. And so that math would
21 occasionally kick an employer up into the large business
22 category.

23 So for employers who wish to use this new method, they
24 can submit the actual number of employees they have on the
25 last day of each quarter. They can do that through the

1 employer portal or in another manner that we determine is
2 appropriate. If an employer does not wish to take this
3 extra step, we will assume that you are happy with the
4 current method of sizing, and we will continue to use that
5 method for the purposes of determining your size for the
6 purposes of premiums and small business grant eligibility.

7 Are there any questions or comments on this rule?

8 I see Deirdre Nguyen has her hand up.

9 MS. DEIDRA NGUYEN: Hi, yes, Deidra Nguyen from Littler
10 Mendelson here on my own personal behalf, but many questions
11 on behalf of employers. Does this rule mean that both
12 employees employed within Washington and outside of
13 Washington are counted? And if so, could that be clarified?

14 MR. JASON BARRETT: So we only count employees who are
15 in Washington, and that is through a process called situs of
16 service that kind of determines exactly which state an
17 employee is considered reportable to for the purposes of
18 statewide benefits like UI and PFML. So if you as the
19 employer determine that your employee's site of service is
20 in Washington, and there's more information about how to do
21 that on our website and through other resources, then they
22 would be considered an employee for PFML essentially, and
23 they would count in that math.

24 MS. DEIDRA NGUYEN: I think the way that comes out -- I
25 don't have it in front of me, but I think the tie-in there

1 to the statutory language is the definition of employment or
2 in employment, and I'm not seeing that hook in the rule. So
3 where the rule says, oh, any employee whose name appears on
4 payroll, that doesn't really tie into this concept of only
5 folks working in Washington are counted.

6 MR. JASON BARRETT: Yeah, I --

7 MS. DEIDRA NGUYEN: I think it needs to be clearer and
8 more explicit about that.

9 MR. JASON BARRETT: Sure. And I can see why that's
10 causing some confusion, but the defin -- I'm looking up
11 quickly. It's in the statutory definition of -- so the
12 statutory definition of employee is someone who is in the
13 employment of an employer, and the statute further defines
14 employment which includes that situs of service test. So
15 you are not considered an employee for any purpose of PFML
16 if your situs of service is determined to be outside of
17 Washington. And so by using the term "employee" in this
18 rule, we are also relying on the statutory definition of
19 employee, which includes employment, which includes situs of
20 service.

21 But I can easily see why that can be confusing, and I
22 think it may be appropriate to sort of clarify that in some
23 of our non-regulatory resources like the website and the
24 employer toolkit. So I'm happy to take that feedback to our
25 communications team.

1 MS. DEIDRA NGUYEN: Yeah, I think that would be great.

2 It's a long breadcrumb trail, especially --

3 MR. JASON BARRETT: It is. I hear you.

4 MS. DEIDRA NGUYEN: -- for HR that's not used to
5 looking through these rules and statutes.

6 MR. JASON BARRETT: I completely understand that.
7 Thanks for the feedback.

8 Carolyn, I see your hand.

9 CAROLYN LOGUE: Yeah, I just wanted to follow up on
10 that because I think in this language here you could easily
11 add in something to the effect of, "employees in Washington
12 state per," and reference back so it's very clear that they
13 can go back to the reference. And it would be fantastic if
14 you had a hyperlink back to the definition. Waiting for
15 that to happen.

16 MR. JASON BARRETT: Great. I appreciate that feedback.
17 Thank you.

18 All right, moving on to WAC 192-560-010, Which
19 businesses are eligible for small business assistance
20 grants? This is the first of two rules related to changes
21 mandated by the passage of HB 1213 associated with small
22 business grants. The bill makes a few changes to how SBA
23 grants work, and we'll talk about maybe a little bit more of
24 the specific changes that were made in a rule that is coming
25 up. For this particular rule, we added a reference to the

1 new statutory requirements. It's really kind of an
2 administrative change that we are making to this rule, but
3 we'll talk a little bit more about what those changes
4 actually are here in a few moments when we get to a
5 different rule.

6 Are there any questions or comments on this rule?

7 (No response)

8 MR. JASON BARRETT: Seeing none, we'll move on to WAC
9 192-560-011, What small business grants are available under
10 pandemic leave assistance? This rule is being stricken as a
11 result of pandemic leave assistance grants no longer being
12 available. That program sunset after the end of the
13 COVID-19 pandemic, so this rule is being stricken along with
14 the end of that program.

15 Are there any questions or comments on this rule?

16 (No response)

17 MR. JASON BARRETT: Seeing none, moving on to WAC
18 192-560-020, What is the application process for a small
19 business assistance grant? So kind of the major -- there
20 are a few changes to how SBA grants work under PFML with the
21 passage of HB 1213. Businesses with fewer than 50 employees
22 are now only required to submit an attestation rather than
23 actual documentation substantiating that a temporary
24 employee was hired, or significant wage-related costs were
25 incurred as a result of an employee's use of Paid Family or

1 Medical Leave.

2 Large employers, that would be employers with between
3 50 and 150 employees, are still required to submit that
4 documentation. And in addition, an application for a grant
5 is denied, it will no longer count against an employee's
6 annual limit of 10 applications. So this is intended to
7 simplify the SBA grant process for small businesses and
8 allow them to document their need for the grant with an
9 attestation rather than having to submit documentation to
10 substantiate the employee that they hired or the costs that
11 were incurred. Are there any questions or comments on this
12 rule?

13 (No response)

14 MR. JASON BARRETT: Seeing none, we will move on to WAC
15 192-620-005, What is the minimum claim duration? HB 1213
16 reduces the minimum duration of missed employment from eight
17 consecutive hours to four for employees who wish to claim
18 benefits. This amendment aligns the relevant WAC with that
19 change, and also it removes an example that is no longer
20 relevant as a result of this change mandated by the bill.

21 Are there any questions or comments on this rule?

22 (No response)

23 MR. JASON BARRETT: Moving on to WAC 192-700-15, How is
24 employer size determined for employment protection? 1213
25 reduces the number of employees required for an employer to

1 observe job protection rights for an employee who takes paid
2 family or medical leave. The threshold will be lowered to
3 25 employees beginning next year, 15 beginning in 2027, and
4 finally, eight employees beginning 2028 and thereafter.
5 This amendment aligns the relevant WAC with those changes.
6 The amendment also offers clarity on who counts as an
7 employee for the purposes of job protection.

8 The definition that is offered here is very closely
9 aligned to the definition used by the Federal Family and
10 Medical Leave Act. I would imagine that folks who have
11 commented on who counts as an employee as it relates to
12 situs of service and localization would probably suggest the
13 same feedback for this rule, so I'm happy to basically copy
14 and paste that feedback for this rule in addition to the one
15 we mentioned earlier.

16 Are there any questions or comments on this rule?

17 (No response)

18 MR. JASON BARRETT: Seeing none, we will move on to WAC
19 192-700-020, When does an employer need to provide a
20 continuation of health benefits to an employee who is on
21 paid family or medical leave? HB 1213 disassociates health
22 benefit continuation requirements from an employee's
23 concurrent use of FMLA. I'm sure folks will remember the
24 previous requirement was that there had to be at least some
25 overlap of FMLA and PFML being used concurrently in order

1 for an employer to be required to continue health benefits.
2 Beginning in 2026, an employee will generally be eligible
3 for health benefit continuation as long as they are also
4 eligible for job protection under Title 50A.

5 So the rule also provides if and when an employee
6 provides unequivocal notice of their intent to not return to
7 employment with that employer, the obligation for the
8 employer to continue those health benefits will cease at the
9 time the notice is received.

10 Are there any questions or comments on this rule?

11 Emily? I had a feeling we'd hear from you on this one.

12 MS. EMILY DUCHAINE: Hi there, Jason. Thank you so
13 much. I'll try to keep this brief. So when you say the
14 health benefits are continued as long as they're eligible
15 for job protection under 50A, correct me if I'm wrong, but
16 did you say that 50A is based on the FMLA job protection?

17 MR. JASON BARRETT: Do you mean the requirements for
18 job protection?

19 MS. EMILY DUCHAINE: Yes.

20 MR. JASON BARRETT: That is mostly true today, but as
21 of 2026, the requirements for job protection under PFML are
22 changing pretty dramatically, and it will be much more
23 generous than the requirements under FMLA.

24 MS. EMILY DUCHAINE: So in other words, much like
25 how the -- much like how 192-700-020 is being disassociated

1 from FMLA, the job protections in 50A are also being
2 disassociated from FMLA effective 1/1/2026?

3 MR. JASON BARRETT: That's largely true. I will say
4 the job protection under PFML was never directly reliant on
5 FMLA. The criteria for job protection were almost exactly
6 the same. It was 50 employees, 1250 hours worked for that
7 employer over the past year, basically just a copy and
8 paste.

9 MS. EMILY DUCHAINE: Yeah.

10 MR. JASON BARRETT: As of 2026, the only two criteria
11 will be employer size, which will gradually drop over the
12 next few years down to eight beginning in 2028. And the
13 requirement is dropped that the employer -- the employee
14 needs to have worked a certain number of hours. They only
15 need to have worked for that employer for a certain number
16 of days. 180 days is what that requirement will change to
17 beginning in 2026.

18 MS. EMILY DUCHAINE: Okay. I'm just trying to suss all
19 this out. And then I have one more question. So because
20 FMLA is a federal right and it does protect health benefits,
21 then -- and if you can't answer this question, I understand.
22 Do you anticipate that most of the time PFML will still run
23 concurrent with FMLA, even though the health benefits
24 protections have nothing to do with each other once this WAC
25 changes? Or do you anticipate that people will still do,

1 say, like 12 weeks of FMLA under which they're not getting
2 paid but they still have their health benefits, and then
3 when that runs out, then they could conceivably do however
4 much PFML they're approved for and then also maintain their
5 benefits under that as well?

6 MR. JASON BARRETT: So I would say that is possible as
7 things exist today. There is a provision of 1213 that
8 addresses that specific issue of stacking, of using FMLA
9 first and then using PFML, and that's I think going to be a
10 pretty robust conversation about what that looks like. But
11 the kind of Reader's Digest version is that if an employee
12 first uses FMLA and then uses PFML, the duration of job
13 protection that they received under FMLA can be reduced
14 accordingly from their PFML job protection.

15 MS. EMILY DUCHAINE: Oh, okay.

16 MR. JASON BARRETT: And that's going to be true
17 starting in January as well.

18 MS. EMILY DUCHAINE: Okay, so then the implication
19 there -- and sorry, I know this is getting a little long, I
20 don't want to take up too much time. So if they used FMLA
21 first and then they had their job protection reduced as a
22 result of using FMLA when they go on PFML, would that mean
23 that then because their job protection is reduced, they're
24 also not necessarily guaranteed maintenance of their health
25 benefits?

1 MR. JASON BARRETT: That I believe is correct.

2 MS. EMILY DUCHAINE: Okay.

3 MR. JASON BARRETT: Because the bill features an
4 exemption for employer -- I would say an exemption for
5 employers to have to continue health benefits if the
6 employee is no longer eligible for job protection, is not
7 eligible for job protection. And so if an employee uses up
8 all their job protection under FMLA and then takes PFML,
9 depending on exactly how the timing works out, they may not
10 be eligible for job protection under PFML, which would then
11 mean they are not eligible for health benefit continuation,
12 although they would still be eligible potentially for the
13 benefits from the state for any leave that they do actually
14 take.

15 MS. EMILY DUCHAINE: Right. So if they take -- if they
16 put in at least eight hours of leave, yeah, I know that goes
17 into our role. One more quick question. What if it's vice
18 versa? What if they take PFML first and they have their job
19 protection and they have their benefits, and then they do
20 FMLA? Because I'm not aware of anything that would allow us
21 as the state to reduce -- if they took FMLA first, then I
22 think we can make an argument because PFML is a state law,
23 but if they took PFMLA first -- or PFML first, sorry, and
24 then they took FMLA, would they still be entitled to job
25 protection under FMLA because FMLA is a federal entitlement?

1 MR. JASON BARRETT: I think you kind of touched on it,
2 that we are a state agency and we have absolutely no
3 jurisdiction over FMLA, and I'm not in a position to tell
4 employers what they can and cannot do with FMLA.

5 MS. EMILY DUCHAINE: Okay. Okay. That's interesting.
6 I'm just trying to suss this out because, as you can
7 imagine, we get lots and lots of questions from the benefits
8 administrators both in PEBB and SEBB orgs, and I know
9 they're not called benefits administrators and PEBB is just
10 what I'm going to call them right now, and sometimes they
11 want to help their employees get the max and so they're
12 trying to figure it out, and then other times they don't
13 want to do that. And, you know, you can imagine the
14 position that puts us in because we can't, like -- yeah, I'm
15 sure you know.

16 So I just wanted to kind of suss out those details,
17 especially since you know I've been asked to do a
18 presentation in my agency for the stakeholders. So this is
19 all very valuable information. I won't take up any more of
20 your time. Thank you, Jason. I really appreciate it.

21 MR. JASON BARRETT: Absolutely. Thanks for joining us,
22 Emily. We appreciate it.

23 MS. EMILY DUCHAINE: Thank you.

24 MR. JASON BARRETT: Angel, I see your hand.

25 MS. ANN HENNINGER: This is Ann on the phone. I have a

1 question too.

2 MR. JASON BARRETT: Sorry. I do want to let Angel go
3 first because their hand was raised.

4 MS. ANN HENNINGER: Sure. Of course.

5 MR. JASON BARRETT: Thank you.

6 MS. ANGEL SURRATT: And I will be really quick. Is
7 there a place that you have or a link you could provide that
8 has a good breakdown to what these changes are in easy-to-
9 follow ways? The person with the questions prior to me
10 asked a lot of the questions that I'm faced with currently
11 with our teammates, and I'm just wondering, the changes that
12 are coming in January, is there a good breakdown somewhere
13 that you could point us to?

14 MR. JASON BARRETT: There absolutely will be. There
15 will be a robust employer communication effort as we kind of
16 hammer out these details. I think we're very close to being
17 able to put everything into a very easy-to-digest language.
18 I think there are just a few details that we still need to
19 hammer out, some of which I'm sure will be discussed at the
20 end of this meeting when we open up the floor and we start
21 hearing questions from employers. But the answer is yes,
22 that absolutely is forthcoming.

23 MS. ANGEL SURRATT: Perfect. Thank you so much.

24 MR. JASON BARRETT: My pleasure.

25 Ann Monroe, I see your hand.

1 MS. ANN MONROE: All I was going to say was to
2 encourage Emily to keep asking her questions, because I am
3 one of those benefit administrators and also I wear the
4 medical leave hat for WSU, and what we're always watching
5 is, are we gifting state funds with ongoing employer
6 contributions? And with these kind of, is it FML, is it
7 PFML, is it overlapping, is it now not matter, it does feel
8 like we're being asked to extend employer benefits perhaps
9 longer, and we're always watching the money that we spend
10 when it's associated. So I was just going to encourage
11 Emily to continue to ask her questions.

12 And I have made note of your name, Emily, and may
13 follow up.

14 MS. EMILY DUCHAINE: Hi, Ann.

15 MR. JASON BARRETT: I agree. Keep asking questions.
16 Always. And I think we had someone joining by phone who
17 would also like to ask a question.

18 MS. ANN HENNINGER: Can you hear me? This is Ann
19 calling, talking, from Olympic Medical Center in Port
20 Angeles, Washington.

21 MR. JASON BARRETT: Hi, Ann.

22 MS. ANN HENNINGER: Hey, I just wanted to underline all
23 of those questions that were asked for us at Olympic Medical
24 Center, the most confusing part of all of this, the
25 reduction of the eight hours to the four hours is really

1 clear, but this is the point where we have lots of
2 questions. And I loved the question about if you take FMLA
3 first and then PFML, but what if you reverse it? We're just
4 still really unclear about all of that and how to implement
5 it. So we would really appreciate -- and it sounds like
6 you're going to have clarification in the next publication
7 you issue or next document you issue. So we would
8 appreciate as much information and details in that as
9 possible.

10 MR. JASON BARRETT: Sure. And I do want to sort of
11 clarify in terms of what we will be offering guidance on and
12 maybe some areas where we can't offer a lot of guidance.
13 And I think -- and I know it's a common question for
14 employers, sort of how they manage FMLA, particularly when
15 PFML is used first, but as I said earlier, we are a state
16 agency and FMLA is a federal program. So we are not
17 offer -- or able to offer guidance to employers on how FMLA
18 provisions work. As my boss always says, not our circus,
19 not our monkeys.

20 So I know there are some resources within the
21 Department of Labor where you can ask these questions, but I
22 just don't want to set the expectation that ESD will be
23 providing information about how employers can or should
24 manage FMLA, because that is unfortunately not in our
25 wheelhouse.

1 MS. ANN HENNINGER: I understand. That's very helpful
2 information to have. I appreciate that. And if you could
3 put that in writing in your document, then I can take that
4 back to OMC and say: We need to get legal advice on this
5 other end via the federal law and how these two go together.
6 Yeah, I get that you can't answer that question, but it's
7 helpful to make that distinction and know what you can
8 answer questions about.

9 MR. JASON BARRETT: I appreciate that. Thank you.
10 Deidra?

11 MS. DEIDRA NGUYEN: Thank you. I was curious about the
12 scenario where an employee would otherwise be entitled to
13 job protection, but let's say the employer experiences a
14 reduction in force, as many employers are going through now,
15 and maybe it's widespread across the state or across the
16 department or what have you, so we're in that scenario where
17 but for the employee having taken leave, their position
18 would have been eliminated, their position is being
19 eliminated. How does that impact health benefits
20 continuation in that scenario?

21 MR. JASON BARRETT: So I'm aware of a bill that passed
22 this year's legislature. It's kind of being colloquially
23 referenced as the mini-WARN Act.

24 MS. DEIDRA NGUYEN: Yes.

25 MR. JASON BARRETT: That essentially says that an

1 employee who is out on paid family or medical leave cannot
2 be party to a layoff. So that bill, the sort of regulations
3 and questions around that bill are actually being handled on
4 the UI side of our house. So I can't speak directly to that
5 bill, but I can say that as long as an employee is out on
6 protected leave and they are still in employment with that
7 employer, then assuming they're otherwise eligible for job
8 protection and health insurance benefits, then the employer
9 would be obligated to continue those benefits.

10 MS. DEIDRA NGUYEN: I hear what you're saying. I don't
11 know if that fully answers my question. And I'm aware of
12 the mini-WARN element, and let's take that off the table.
13 So assume it's a reduction in force or a layoff, it doesn't
14 trigger the -- the mass layoff doesn't fall within
15 mini-WARN. So if there is an employment separation with an
16 employee during their PFML, does that cut off their
17 eligibility for health benefits continuation?

18 MR. JASON BARRETT: I would say that the answer to that
19 question is, I think I'd like to think about that. Deidra,
20 I'm going to give my email address, and if you could, shoot
21 me an email with that question. I think I know the answer
22 but I don't want to say something that I'm not completely
23 sure of in a public meeting. So if you could shoot me an
24 email at Jason, J-A-S-O-N, dot, Barrett, B-A-R-R-E-T-T
25 @esd.wa.gov, I'd be happy to look into that and get a

1 definite answer for you.

2 MS. DEIDRA NGUYEN: Great, thank you.

3 MR. JASON BARRETT: Megan Murray, I see your hand.

4 MS. MEGAN MURRAY: Yes. You had touched on kind of the
5 issue with any leaves that are approved currently but may be
6 going into the new year and kind of the issues with how to
7 handle those, but I don't think we had more of a discussion
8 about that yet.

9 MR. JASON BARRETT: Yeah. So in terms of the larger
10 job protection provisions, I'm going to hold off on that
11 conversation until after we get through the draft rules.
12 But I know that that's a topic, and I want to get into it,
13 but I want to just get through the draft rules that we do
14 have, and then we can discuss possible rules that maybe
15 we're not seeing quite yet.

16 Emily?

17 MS. EMILY DUCHAINE: -- because it might be more on our
18 end. Are you also including life, A&D and LTD?

19 MR. JASON BARRETT: I'm sorry, you kind of faded in
20 halfway through your question. I didn't --

21 MS. EMILY DUCHAINE: Oh, I'm so sorry. Can you hear me
22 now?

23 MR. JASON BARRETT: Yes, yes. You're much better.

24 MS. EMILY DUCHAINE: So when you say -- yeah, my laptop
25 is crappy. When you say maintenance of health benefits

1 under PFML, are you also including life, AD&D and LTD in
2 with that, or are you only intending to reference medical,
3 dental, vision?

4 MR. JASON BARRETT: This would only be -- oh, so okay,
5 so you're asking what is considered health benefits under
6 this?

7 MS. EMILY DUCHAINE: Yeah.

8 MR. JASON BARRETT: Yeah, I think that's probably a
9 better conversation to have offline. I'm happy to walk
10 through that with you.

11 MS. EMILY DUCHAINE: Not a problem.

12 MR. JASON BARRETT: Yeah. I think we have some
13 information that we can send you on that also, maybe outside
14 of this meeting.

15 Megan, I still see your hand up. Is that from earlier?

16 MS. MEGAN MURRAY: Yes, I will -- is that --

17 MR. JASON BARRETT: Yeah, perfect. Thank you. Yeah,
18 and I will absolutely get into exactly when these new
19 provisions take place and how that affects people who are on
20 leave starting in 2025. I just want to get to the end of
21 these rules and we can kind of open it up for a broader
22 conversation around job protection.

23 MS. MEGAN MURRAY: Thank you.

24 MR. JASON BARRETT: Vanessa Medford, I see your hand.

25 MS. VANESSA MEDFORD: Hi. Vanessa Medford. I'm at

1 Regional Fire Authority, but I have a quick question. I
2 know we have some questions around providing a little bit
3 more direct guidance. You're not willing to have a
4 conversation about which benefits that PFML is going to
5 require that we maintain, but when this is actually going
6 into effect, is that something that you're going to outline
7 on the website? Because if you're not able to tell us what
8 we're required to maintain, it's kind of hard to know what
9 we're supposed to be doing.

10 MR. JASON BARRETT: No, I completely understand that
11 and that what benefits are considered covered. That's not
12 changing as a part of this bill. Employers, large employers
13 have already been sort of working with this since the
14 program launched. And so that's not changing. That
15 information is available. And I'm trying to kind of just
16 keep us focused on what's changing as a result of these
17 bills and these draft rules right now. I'm more than happy
18 to direct you get some information about that. Just this
19 particular meeting is about the draft rules and the bill
20 that has passed that is sort of causing all these changes.

21 MS. VANESSA MEDFORD: Okay.

22 MR. JASON BARRETT: All right. And then our final
23 draft rule is WAC 192-800-100. This is unrelated to any
24 specific legislation, but this is just an administrative
25 rule that speaks to the process of how an appeal is

1 escalated to the Commissioner's Review Office and the
2 timeline that is associated with that process. Are there
3 any questions or comments on this rule?

4 (No response)

5 MR. JASON BARRETT: Okay, I want to give one final
6 opportunity for folks to ask any questions or provide
7 comment on the draft rules that are available now, and then
8 we'll move into the conversation around job protection. But
9 for now, as far as the draft rules that are in front of you
10 go, are there any additional questions or comments?

11 (No response)

12 MR. JASON BARRETT: Okay, so that was great. I
13 appreciate all the questions --

14 MS. DEIDRA NGUYEN: I'm sorry. I tried raising my
15 hand.

16 MR. JASON BARRETT: Oh, I'm sorry.

17 MS. DEIDRA NGUYEN: I did have one more, if I may.

18 MR. JASON BARRETT: Yeah, go ahead.

19 MS. DEIDRA NGUYEN: On a seemingly simple rule, the
20 minimum claim duration, again understanding and appreciating
21 that FMLA is not your circus. In FMLA land, a very
22 important concept is increments of use when it comes to
23 intermittent leave, and I receive questions all the time
24 from HR being confused about how the minimum claim duration
25 does or does not overlap with the concept of increments of

1 use. So assuming that the minimum claim duration has been
2 satisfied, what is the increment in which leave can be used?

3 I think some rule clarity around that might be helpful.

4 MR. JASON BARRETT: So are you asking kind of at what
5 point in the week must the four-hour threshold be met?

6 MS. DEIDRA NGUYEN: No, not exactly. So assume we've
7 met the four-hour threshold, no problem. Then what's the
8 smallest chunk of time that folks can use their PFML? So
9 for paid sick leave, it could be in very, very small
10 increments. Under the FMLA, an employer could set an
11 increment consistent with other leaves types, but the
12 increment can't be larger than an hour. What's the rule for
13 PFML?

14 MR. JASON BARRETT: Sure. So for PFML, if at any point
15 in the week the four-consecutive-hour threshold is met, the
16 employee can use leave in whole-hour increments in any other
17 point in the week at their discretion.

18 MS. DEIDRA NGUYEN: And there isn't really a rule or
19 statutory text that talks about that whole-hour increment
20 concept, Right?

21 MR. JASON BARRETT: Off the top of my head, I think
22 there is something that says that they must be claimed in
23 increments of whole hours, but I would need to verify that.
24 So when you and I chat about health benefits, I'll look into
25 that as well.

1 MS. DEIDRA NGUYEN: Okay, sounds great.

2 MR. JASON BARRETT: Okay, so with that, I would really
3 like to open up the floor right now to folks who are perhaps
4 looking for some guidance on the job protection and notice
5 aspects of this new bill that you're not currently seeing in
6 these draft rules, which I know is fairly minimal, and we
7 are really interested to hear this feedback because as
8 employers, you are going to be largely responsible for
9 managing this and so we want to know from you, how can we
10 help you sort of clarify these requirements, what rules
11 would you maybe like to see, what definitions would you like
12 to see, what aspects of this law are causing challenges and
13 what can we do to help you tackle all those challenges?

14 Deidra, I think your hand is up, but I think it was
15 maybe up from before.

16 MS. DEIDRA NGUYEN: No, I still have more.

17 MR. JASON BARRETT: Okay, go ahead.

18 MS. DEIDRA NGUYEN: This is my favorite topic. So one
19 potential softball is that in the amendment, the term
20 "unpaid leave" is used, and I think it's intended to be
21 synonymous with FMLA, with the idea being that FMLA is
22 unpaid, Washington Paid Family Medical Leave is paid. But
23 there are many occasions in which FMLA feels like a paid
24 leave benefit because employees are using short-term
25 disability or they're using vacation or they're using paid

1 sick leave or what have you.

2 Of course those are different benefit entitlements, but
3 to just refer to FMLA as unpaid leave feels like a little
4 bit of an oversimplification. So just sort of a broad
5 comment that in drafting rules around this concept, it would
6 be really helpful if the language of the rules is crystal
7 clear, like when we're talking about FMLA, paid or not, as
8 opposed to when we're talking about PFML.

9 MR. JASON BARRETT: That's a great comment. I
10 appreciate that. Thank you.

11 MS. EMILY DUCHAINE: I second that.

12 MR. JASON BARRETT: All right. Carolyn, I see your
13 hand.

14 CAROLYN LOGUE: Sorry, it took a minute to unmute.
15 I've just been thinking overall about, so you've got HR
16 professionals on here who are asking these questions, and
17 I'm thinking as what is needed from a smaller business or
18 people who don't have HR professionals, this is about over
19 the next years to be moving into that world where you have
20 businesses where there's no HR staff, there might not be,
21 only the owner.

22 So to the extent on what increments can they take it,
23 all of that sort of thing, if there's any way in these rules
24 to have hyperlinks or guidance documents that are easy to
25 find along with it so somebody does not have to go on that

1 WAC or RCW search. This is going to be incredibly important
2 for compliance.

3 MR. JASON BARRETT: I completely agree with that. We
4 are hoping that you will get the information you need from
5 us and the materials that we provide on the website through
6 tools like the employer toolkit. If you as an employer are
7 combing through RCWs and WACs to find the answer to your
8 question about PFML, we have probably not done our jobs
9 correctly. So we will try to be as comprehensive as
10 possible with the materials that we publish, and I
11 appreciate you naming that concern. Thank you.

12 CAROLYN LOGUE: Well, and I think there's actually --
13 and I know this has happened at L&I a few times. We
14 actually do some rule writing with almost examples in there
15 that might be used as well in the actual rule to help so
16 that somebody's looking at that, it's immediately there,
17 right, there for them to look at. And I'm not joking about
18 the State has got to figure out how to hyperlink within that
19 language.

20 MR. JASON BARRETT: Yeah. That's going to be up to the
21 Code Revisor's Office to -- I think some of RCWs I believe
22 do have hyperlinks. I'm not a hundred percent sure about
23 the WACs, but that's a good --

24 CAROLYN LOGUE: Yes, some do.

25 MR. JASON BARRETT: Some do? Yeah, okay. So we'll,

1 yeah, that's --

2 CAROLYN LOGUE: Well, I think, and as we're drafting
3 new ones, it seems like it would be useful to maybe see if
4 that could be done as you, since you're doing new ones, like
5 getting back into what's the definition of employee. So if
6 you're looking at, are my employees eligible? What do I
7 count? To be able to immediately go to what's the
8 definition is incredibly useful for somebody who's trying to
9 do it on their own as they're trying to also manage the
10 overall business themselves.

11 MR. JASON BARRETT: Sure, yeah. That makes a lot of
12 sense. Thank you.

13 Patricia?

14 PATRICIA ZUNIGA: Thanks. Sorry it took me a second
15 there. My name is Patricia Zuniga, and I'm from Fineos,
16 F-I-N-E-O-S. So I support the questions raised previously
17 by Emily and the other benefit administrators. I'm hoping
18 to provide additional insights on coordination and timing.
19 So if you can bear with my comments here, I promise I'll
20 keep it brief. So first, coordination of timeframes. The
21 question everyone has is when Washington PFML job protection
22 begins and ends, and this is difficult for us because
23 federal FMLA periods are defined by the employer, and it
24 varies.

25 So there's calendar year, there's fixed year, there's

1 rolling forward, rolling backward, and we don't have the
2 exact statistics on employer usage rates for each method,
3 but there are reports out there. One is from 2024. It says
4 that about 72 percent of employers use the rolling-backward
5 method to establish the FMLA 12-month period. So it's very
6 difficult what House Bill 1213 has introduced by extending
7 Washington PFML job protection to employees who are on FMLA
8 leave and meet eligibility for Washington PFML, so even if
9 they do not apply for those PFML benefits.

10 So the interaction of those multiple timeframes is very
11 confusing and it increases the risk of noncompliance for
12 employers. So we recognize that the State cannot provide
13 guidance on the federal FMLA. We think that it can and
14 should provide direction on how to count Washington PFML job
15 protection, especially in cases where it overlaps with FMLA
16 because House Bill 1213 references it.

17 So my second point is on timing, just pointing out that
18 House Bill 1213 takes effect January 1, 2026, and employers
19 need clear compliance guidance. And the ESD does not
20 directly code or track FMLA or PFML job protection periods.
21 It falls on the employer to operationalize these rules, and
22 without clear guidance as to how these periods interact with
23 each other, it's going to be a difficult challenge how to
24 operationalize these rules accurately and on time.

25 So just respectfully, finalizing rules in late December

1 is too late because employers are going to need time to
2 interpret the guidance, update internal policies, train
3 staff, and coordinate with vendors like us. So even
4 well-intentioned employers are going to struggle to apply
5 this law consistently and fairly. So thank you for your
6 time and thanks for hearing us out.

7 MR. JASON BARRETT: Thank you, Patricia. I appreciate
8 that feedback. And I want to reiterate that the late
9 December would be when we've already completely finalized
10 the rules. Brett kind of mentioned earlier that there are
11 several steps between now and then. There will be
12 additional opportunities for employers to provide comments
13 and feedback on the proposed rules. So we absolutely
14 understand the timelines that employers are up against with
15 this bill, and we want to be as transparent and
16 communicative as possible with that community because they
17 need time to build their systems. And we absolutely
18 understand and respect that. So I appreciate you calling
19 that out, Patricia. Thank you.

20 PATRICIA ZUNIGA: Thank you.

21 MR. JASON BARRETT: Deidra again. Deidra, if you're
22 speaking, you are on mute.

23 MS. DEIDRA NGUYEN: Thank you. Classic. I agree with
24 Patricia's feedback, and also I wanted to share that I
25 think -- I found the examples for minimum claim duration

1 really helpful. So just an overarching comment of more
2 examples for all the things and all the places would be
3 amazing, particularly on this concept of the various ways in
4 which the 12-month period is calculated for FMLA purposes.
5 Littler is the largest labor and employment firm
6 representing employers, and my anecdotal experience echoes
7 what the statistics that Patricia shared, that the rolling-
8 backward method is the most common, the most popular. It's
9 the most effective in avoiding leave stacking.

10 Conceptually, this PFML amendment is supposed to, I
11 think, give employers the tools to avoid leave stacking
12 between PFML and FMLA. So this concept of how that actually
13 works in practice and integrates with FMLA concepts I think
14 is going to be really important. So if there could be
15 examples in the rules, for example, if the employer counts
16 the 12-month period using rolling backward versus a measured
17 forward, I think that would be very helpful.

18 Some of these concepts I think are easier to apply for
19 employers that use the calendar year method. That is not a
20 very popular method of counting the 12-month period for
21 FMLA, in my experience.

22 Related to that, the amendment uses the term
23 "designate." This concept of, oh, we're going to inform
24 employees that we are designating your FMLA period towards
25 your Washington Paid Family and Medical Leave job

1 protection, that is a very -- that's almost I would say a
2 legal term of art under the FMLA. And with all due respect,
3 I think the amendment doesn't quite acknowledge that.

4 So, for example, the timing under the FMLA is once we
5 have notice that an employee needs to be absent for a reason
6 that could qualify, we've got five business days to tell
7 them about their eligibility. And at that point is when the
8 employer would inform the employee that they need to return
9 a medical certification, for example, if it's for their own
10 serious health condition or that of a family member, and
11 then the employee would have 15 days to return that
12 certification.

13 Once the certification is returned, then the employer
14 has five days to designate the leave as FMLA or not.
15 Whereas under the amendment, we're supposed to be telling
16 employees within five days of their initial request for
17 leave that their leave is being designated. And so it
18 really, really accelerates this concept of designation
19 before the employer even has enough information to know
20 whether something is FMLA qualifying or not.

21 And I recognize that the statutory language is what it
22 is, but I think in recognition of the fact that there are
23 some notices that are going to have to go out the door well
24 before we know whether an employee's leave is or is not
25 FMLA. I think there needs to be some rules around this

1 concept of maybe correcting or updating the notice once we
2 actually as the employer have information to know whether
3 the leave that the employee is on is FMLA or not.

4 I would also just say a potentially more extreme
5 example is in the case of new child bonding. Oftentimes,
6 those requests for leave come well in advance of the event.
7 And it seems like there's just this very, very quick
8 requirement to act under the amendment well before the
9 employer has all of the information that it needs in order
10 to give proper, fully informed and accurate notice.

11 MR. JASON BARRETT: That's extremely helpful, Deidra.
12 I really appreciate it. Can I -- I would like to maybe hear
13 a little more from either you or anybody else who would like
14 to contribute to the conversation. You mentioned that I
15 think 72 percent of FMLA employers use the 12-month
16 look-back period. Can you talk a little bit about why that
17 is and what the -- sort of why that is such a common
18 practice as opposed to using the calendar year or the;
19 12-months look-ahead?

20 MS. DEIDRA NGUYEN: Sure. I will give my anecdotal
21 feedback and welcome others to chime in and share their
22 experiences or their knowledge in addition. But just to
23 take a very simplistic example, if we use the calendar year
24 method, an employee could take their leave at -- their 12
25 weeks of FMLA at the end of one calendar a year, and then

1 the new calendar year would start and they would be in a new
2 leave year, and if they were still eligible, they would have
3 an additional 12 weeks that they could stack, which is the
4 term we use to describe employees taking two types of leave
5 back to back rather than concurrently. They could stack
6 their leave and get 24 weeks of leave in a row just by
7 virtue of how that 12-month period is calculated.

8 And the best method for avoiding stacking is the
9 rolling backward method, which says, okay, if an employee's
10 requesting leave today, we look in the rearview mirror to
11 see, well, how much leave have they used in the prior
12 12-month period? And that's how we determine how much leave
13 is left.

14 And I think that method makes it a little bit awkward,
15 this concept of, oh, continue to give notice monthly
16 throughout the leave year, because when we're doing a
17 rolling-backward method, our leave is in the rearview. So
18 some of these concepts are a little difficult to apply in
19 the rolling-backward method. Again, my experience is
20 anecdotal but it is by far and away the most common method
21 for measuring the 12-month period.

22 MR. JASON BARRETT: And does that -- I kind of view
23 that as like a rolling sort of calendar.

24 MS. DEIDRA NGUYEN: Right.

25 MR. JASON BARRETT: Whereas you say every time they

1 make a request for leave, you examine the 12-month period
2 preceding when that leave would start and sort of determine
3 if they've hit the 12 weeks, or eight or seven or however
4 much they've used.

5 MS. DEIDRA NGUYEN: Correct.

6 MR. JASON BARRETT: Okay, that's very helpful. Thank
7 you.

8 MS. DEIDRA NGUYEN: Whereas the measured-forward method
9 is, that's a finite period and it starts as of when you
10 provide your notice, and we're looking forward, and that's a
11 definitive leave year as opposed to this kind of constantly
12 changing and evolving leave year that you could experience
13 under the rolling-backward method.

14 MR. JASON BARRETT: Sure. That makes sense. That's
15 really helpful. I know what the legislature kind of had in
16 its -- was sort of trying to get at with this, and I'm
17 hoping that in rule we can kind of marry their intent with
18 how things work actually on the ground for employers and HR
19 professionals. So that's very helpful. Thank you.

20 MS. DEIDRA NGUYEN: Yes. Just one other concept on the
21 designation. The idea that Washington law would require us
22 to tell employees that their leave is FMLA designated before
23 we're required to do that under the FMLA and before we have
24 all of the info that we need, I'm thinking about the
25 certification, in order to do that, that scares me. That

1 worries me. You know, to be designating something as FMLA
2 before we have all the info that we need and the potential
3 ramifications that there might be from doing that.

4 MR. JASON BARRETT: That's very helpful. I'm sorry if
5 I'm -- there's a pause just because I'm taking notes. So I
6 appreciate that.

7 Connie?

8 MS. CONNIE SUMMERS: Yes. Hi, Connie Summers. I'm
9 with Compass Health, C-O-M-P-A-S-S, H-E-A-L-T-H. And I
10 wanted to kind of piggyback on the comment about the five
11 days. Would there be any consideration for -- so if we
12 don't have enough information, if we don't have enough
13 information to make a determination within that five days,
14 would there be a possibility of providing contingent
15 approval? And contingent upon receiving the documentation.

16 MR. JASON BARRETT: I think we are willing to consider
17 pretty much anything. I can't promise a specific rule, but
18 we are happy to consider anything based on feedback that we
19 hear today. So I'm happy to take that back, and we can
20 discuss that as a kind of a -- so when you say contingent,
21 you mean like a contingent designation of FMLA for the
22 purposes of adhering to the requirements of 1213?

23 MS. CONNIE SUMMERS: Yes.

24 MR. JASON BARRETT: Yes, we can definitely discuss that
25 as a possibility.

1 Deidra?

2 MS. DEIDRA NGUYEN: I promise to be more brief this
3 time.

4 MR. JASON BARRETT: No, it's fine.

5 MS. DEIDRA NGUYEN: Is there any contemplation that the
6 Department will be, and I'm sorry if this was already
7 addressed and I missed it, issuing template forms for
8 employers to use to implement this designation concept?

9 MR. JASON BARRETT: Are you -- so you're suggesting
10 templates that employers can use to notify their employees
11 to meet the requirements of the notice?

12 MS. DEIDRA NGUYEN: Exactly, yes.

13 MR. JASON BARRETT: We can certainly discuss that as
14 well. We do have some -- I think there are other parts of
15 the law that require a notice that the Department does offer
16 templates for. So I can certainly take it back to our team
17 to see if we can develop those for these notices as well.

18 MS. DEIDRA NGUYEN: Great. And I think that's where
19 this concept of contingent designation for purposes of
20 calculating PFML job protection, it seems like that might be
21 a good place where that concept could be baked in.

22 MR. JASON BARRETT: Great. Thank you.

23 Breanna Scott, I see your hand.

24 MS. BREANNA SCOTT: Yeah, I just wanted to clarify also
25 with this, just making sure my understanding is correct. An

1 employer is not technically required to implement this new
2 reduction of PFML job protection during the FMLA period if
3 they choose not to. Is that correct and accurate?

4 MR. JASON BARRETT: That is correct and accurate. So
5 the notice of expected-to-return-to date and expected job
6 protection rights is required for all employers who have an
7 employee who is taking at least two weeks of leave. All of
8 the other concepts that we've been discussing, like the
9 rolling FMLA calendar and kind of determining exactly what
10 leave might be considered as FMLA designated, that's all
11 related to the optional process that employers can implement
12 if they would like to have the option of counting leave
13 taken under FMLA against the employee's job protection under
14 PFML.

15 Employers are under no obligation to do any of these
16 things as it relates to stacking. If you want to let your
17 employees just take the leave under FMLA and PFML without
18 the two kind of ever interacting with each other, that's
19 completely up to you. You're not obligated to do any of
20 this. But if employers do want the option of counting FMLA
21 leave usage against PFML job protection, then these are the
22 steps that those employers would need to take in order to
23 retain the ability to have that leave count against PFML job
24 protection. But you're correct, it's not required.

25 MS. BREANNA SCOTT: Wonderful. Thank you very much for

1 that confirmation. I just wanted to make sure that
2 employers didn't feel like they had to do it if they chose
3 not to. Thank you.

4 MR. JASON BARRETT: Right, right. And especially with
5 the lowering of the employee threshold for PFML job
6 protection, there are now going to be a lot of employers who
7 are not subject to FMLA at all who do have to offer PFML job
8 protection, and those employers don't really need to worry
9 about any of this with FMLA because FMLA requires an
10 employee count of at least 50 to be sort of under the
11 jurisdiction of that law.

12 So smaller employers who may now find themselves
13 subject to job protection under PFML can essentially ignore
14 all of this because those employers are generally not
15 covered by FMLA.

16 Connie, I see your hand still raised. Is that from
17 before or did you have an additional comment?

18 MS. CONNIE SUMMERS: I don't. Thanks.

19 MR. JASON BARRETT: That's all right.

20 Deidra?

21 MS. DEIDRA NGUYEN: For employers that do avail
22 themselves of this ability to hopefully prevent stacking,
23 the requirement to provide the monthly notice for the
24 duration of the leave year, I think that obligation to
25 continue to provide that notice is extinguished if the

1 employee ends up filing for PFML, but I don't think that the
2 amendment is explicit about that. So if that's the case, it
3 would be helpful to have a rule that confirms it. Because
4 there are a lot of notices that employers have to give under
5 FMLA, now we've got some PFML notices, and to give a monthly
6 notice for a 12-month period, that's a lot. So if there's
7 something that cuts that off, it would be good to have a
8 clear rule about that.

9 MR. JASON BARRETT: Great. We'll definitely take that
10 back. Thank you.

11 All right. Is there anybody else who would like to
12 contribute feedback or questions or comments about the job
13 protection provisions, or anything really, under 1213?

14 (No response)

15 MR. JASON BARRETT: Hearing none -- oh, I'm sorry.
16 Ann?

17 MS. ANN MONROE: Yeah, I'm going to -- I kept looking
18 and I couldn't find it, so I may be -- so I hope I don't
19 sound -- well. The expectation that FML and PFML run
20 concurrently, I'm just going to make this as a comment, that
21 of course our notifications from PFML shows what we have to
22 interpret as, oh, this person must have applied for
23 intermittent PFML because it's been designated. We received
24 the letter saying it's been designated for a year.

25 And then our own FML may show the person is taking

1 full-time leave and so they utilize full 12 weeks or 480
2 entitlement pretty dang quick, but we still have this notice
3 from PFML that says it's been designated for a year. I'm
4 just making the comment that that is very, very hard to
5 administer, is when we have very much conflicting
6 information that we know something through our FML processes
7 and we don't have any details other than a designation
8 period from ESD.

9 And then I'm going back to that, if they're supposed to
10 be run concurrently, how would we know? Who's watching
11 that? Who's monitoring that? Who's making sure these
12 things are running concurrently? When we don't know your
13 part because all we know is a designation period, you don't
14 know our part that we as employers are doing for FML. So
15 I'm just making that as a comment, that that can be pretty
16 hard to administer.

17 MR. JASON BARRETT: Yeah, I think that's a great
18 comment. And I think what you are speaking to is sort of a
19 symptom of having kind of a patchwork of state laws that
20 don't necessarily directly interact with any kind of federal
21 program other than kind of FMLA, kind of, sort of. I think
22 that's a very real struggle that employers have to manage.

23 And I wish I could snap my fingers and make a very
24 clean, happy federal law that address all these concerns.
25 But sadly, I do not have that ability today. So for now, we

1 will continue to hear concerns from our employer community
2 and manage the two programs as best we can.

3 MS. ANN MONROE: Great. I get that. And just as a
4 quick, I realize you have no control over the federal
5 program, but as far as the state program goes, I am also
6 going to mention this, that for those of us that also do
7 worker compensation claims, we have access to all of the L&I
8 documentation and what a person is claiming.

9 And we have more insight into those claims through our
10 relationship with another state agency, Department of Labor
11 and Industry that I've often wondered since PFML rolled out
12 that why is it we are trusted over here to know all this
13 information on L&I claims, but under the PFML program, we
14 don't have any access or knowledge of what's happening over
15 there? And so again, I don't know if I have a solution, but
16 just another comment.

17 MR. JASON BARRETT: Sure. And I will say that's
18 probably the single most frequent piece of feedback that I
19 receive as it relates to this program, is that the
20 Department doesn't share enough information about an
21 employee's use of paid leave with employers. And all I can
22 say about that is that the legislature passed a very, very
23 strict privacy provision after the original bill passed, and
24 it very clearly dictates what we can and cannot share with
25 employers. And I know much the chagrin of our employer

1 community, we are very, very restricted in terms of what we
2 can share. And so I would suggest that if you would like to
3 see that change, as I know many people in our employer
4 community would, I would suggest reaching out to your
5 legislators to make that change.

6 MS. ANN MONROE: Thank you.

7 MR. JASON BARRETT: Thank you. Deidra?

8 MS. DEIDRA NGUYEN: I would be remiss if I didn't add
9 to the pile of chagrin on behalf of the employer community.
10 This is also the number one frustration that I hear from my
11 clients is about the lack of transparency regarding an
12 employee's claim and use of PFML. And it has been a
13 learning process, and I was very hopeful that when the
14 amendment was passed to require the employer, quote, portal
15 that there would be a whole lot helpful information there.
16 And unfortunately, that hasn't been the case.

17 What I have experienced is that there's a huge
18 difference between an employee applying for PFML and having
19 that application be granted versus an employee actually
20 claiming hours week to week versus an employee actually
21 being granted hours week to week. And for those last two
22 pieces of info, employers are heavily reliant upon
23 essentially the honor system of employees, if the employer
24 even thinks to make a request that the employee share that
25 information.

1 And I could be biased because I don't get calls from
2 employers where things are going swimmingly. So I'm called
3 in to help when things are kind of going awry or they're
4 confusing, and I'm seeing a high level of employee abuse of
5 the system by not claiming all of their hours or not
6 disclosing when their claim for PFML hours when those claims
7 are being denied.

8 I have seen where an employer is able to get kind of a
9 recap, but long, long after the fact, and at that point, the
10 employer has been really hampered by keeping this job open
11 and not being able to bring in support to fill the role and
12 do the duties that need to get done and all of those other
13 things that come with a leave of absence. The employer in
14 good faith is treating that absence as protected, and the
15 employee is not even claiming those hours, and the employer
16 has no insight or visibility into that until well after the
17 fact.

18 And even the data that they are able to get does not
19 give a breakdown of the specific number of hours on a
20 day-to-day basis, and that's the info that folks need to be
21 able to administer leave of absence benefits. So I will
22 take that feedback back on my end in terms of, you know, the
23 solution being through the legislative route. I really
24 thought that this was going to be part of the employer
25 portal that employers are now able to access, and it's

1 really unfortunate that it doesn't get into that level of
2 detail. Because whether an employee is on a protected leave
3 or not, that makes all the difference for employers. They
4 need to know that. And to not have access or insights into
5 that very critical fundamental question is just incredibly
6 difficult.

7 MR. JASON BARRETT: I hear that frustration and it is
8 shared by many others in the employer community. As I said,
9 I hear that a lot. All I can say is the Department is
10 required to implement the law that the legislature passed,
11 and I wish I could address those concerns with more
12 efficacy, but unfortunately we have the law that we have and
13 we have implemented it to the best of our ability. And I
14 would just once again underline that if you would like to
15 see changes to the privacy provisions, then reaching out to
16 your legislators is the way to go on that.

17 I see someone joining by phone whose number ends in
18 7135. I don't see a name, unfortunately, but I do see your
19 hand, so if you'd like to provide feedback, you are welcome
20 to do so.

21 You are currently muted. Someone joining by phone
22 whose number ends in 7135, I see your hand but we can't hear
23 you, unfortunately.

24 MS. JANETTE BENHAM: See if you can unmute yourself
25 if --

1 MR. JASON BARRETT: There you go.

2 MS. JANETTE BENHAM: Yeah, there you go.

3 MS. MAGGIE HUMPHRIES: Can you all hear me now?

4 MR. JASON BARRETT: Yes.

5 MS. MAGGIE HUMPHRIES: Okay, sorry. This is Maggie
6 Humphries representing Moms Rising, and also I represent
7 employee interest on the PFML advisory committee. I wanted
8 to go back to a comment a couple of comments ago regarding
9 employee health information and just for the record share
10 comment that from the employee side of things, maintaining
11 privacy of employee health records and employee health
12 information that's not related to an onsite job -- onsite or
13 on-job injury is really critical from the employee
14 community. Paid Family and Medical Leave is fundamentally
15 different from L&I in that regard, and from our community's
16 perspective, it would be critical to maintain that privacy
17 statute that we currently have.

18 MR. JASON BARRETT: Thank you, Maggie.

19 And then, because we are getting kind of close to time
20 I see one more comment from our ombuds, Edsonya Charles, and
21 I will let her speak and then we'll go ahead and close out.

22 So Edsonya, go ahead.

23 MS. EDSONYA CHARLES: Sorry, I was having a bit of
24 trouble. So I just wanted to address some concerns I'm
25 hearing from employers -- I'm sorry, Jason, I would just

1 like a little bit of time. I just wanted to offer this.

2 Although the privacy law controls some things,
3 employers who get full access to their account, you can go
4 on the employer website or call the Customer Care number to
5 find out how to do that, can get real time information about
6 whether or not their employee filed a claim on their Paid
7 Family and Medical Leave for a given week.

8 MR. JASON BARRETT: That is one hundred percent
9 correct. Thank you, Edsonya. You are able to see whether
10 an employee filed for and received benefits for a particular
11 week through the employer portal. So hopefully that -- that
12 was a change that was implemented a few years ago and
13 hopefully addressed at least some of the concerns that we
14 know several in the employer community, several members of
15 the employer community had. So I recognize, and I've heard
16 a lot that it wasn't a hundred percent of what employers
17 were hoping for, but hopefully it did address some of those
18 concerns.

19 And with that, we are very close to time and I want to
20 be respectful of everybody's schedule. And I just first of
21 all want to say thank you all so much for providing this
22 feedback. I know as someone who's involved in rulemaking
23 with ESD, we think that these meetings are probably the most
24 valuable part of our rulemaking process because we really
25 want to hear from those that these rules affect. And so I

1 just want to express how grateful I am to those who provided
2 feedback and asked questions, and would encourage you to
3 continue to do so as we move through the rulemaking process.

4 I kind of spoke a little bit to the timeline. We got a
5 lot of feedback today, so we're going to take this feedback,
6 kind of digest it a bit, and then we'll announce next steps
7 through the rulemaking newsletter that we send out.
8 Paidleave.wa.gov, if you are not on that newsletter and
9 would like to join it, go ahead and head over to that
10 website, paidleave wa.gov. I know rulemaking is a very
11 exciting part of our process and hopefully answers a lot of
12 questions without creating too many more.

13 But as I said, we really value the feedback that we get
14 in these meetings, and I just want to again say thank you
15 very much. And paidleave.wa.gov/rulemaking is the website
16 that you can bookmark to find the latest and greatest on
17 rulemaking with this wonderful program. And if you have any
18 questions or comments about these rules, please send those
19 questions and comments to rules@esd.wa.gov. Again, that's
20 rules, R-U-L-E-S, @esd.wa.gov. We monitor that inbox daily
21 and try to respond as quickly as possible. So please look
22 to that email address if you'd like to submit anything else.

23 And with that, we'll go ahead and close out. Thank you
24 all again, and I hope you enjoy the rest of your Thursday.

25 (Concluded at 10:25 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:

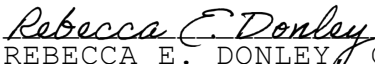
That the foregoing deposition was taken before me at the time and place therein set forth;

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 11th day of September 2025.


REBECCA E. DONLEY CCR
CCR License #3184
Certified Court Reporter in and
for the State of Washington,
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