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

VERBATIM RECORD OF PROCEEDINGS
PROPOSED REGULATIONS RE PAID FAMILY LEAVE PROGRAM
VIA TEAMS

A P P E A R A N C E S

PRESIDING OFFICER: JASON BARRETT

ALSO PRESENT: BRETT CAIN

1 PROCEEDINGS

2 MR. BARRETT: We will go ahead and get
3 started.

4 My name is Jason Barrett. I am Lead Policy
5 Analyst for the Leave and Care Division of the
6 Washington State Employment Security Department.
7 Thank you very much for joining us for this rulemaking
8 hearing. I'd like to go ahead and discuss a few
9 housekeeping items before we begin the hearing
10 formally.

11 Just a reminder that this meeting concerns
12 proposed regulations regarding the paid Family and
13 Medical Leave program of Washington state.

14 This meeting will not feature discussion of
15 any benefit application and attendance is completely
16 optional.

17 If you have questions regarding your own
18 application or weekly claim for paid family or medical
19 leave, or if you have other general questions about
20 the program, please call our Customer Care Team at
21 833-717-2273.

22 We will not be able to answer any questions
23 during this hearing.

24 Today's hearing is regarding the proposal
25 that revises sections of Washington Administrative

1 Code regarding the implementation of legislation
2 passed during the 2025 legislative session.

3 If you would like to provide written
4 comments related to these rules, you may do so by
5 email at rules@esd.wa.gov.

6 Again, that's rules@esd.wa.gov.

7 We'll continue to accept written comments
8 through the close of business today.

9 To view the electronic version of proposed
10 rules you can go to paidleave.wa.gov/rulemaking.

11 Again, that is paidleave.wa.gov/rulemaking.

12 The proposed rules are under the current
13 Rule Making heading. Clicking on the plus sign next
14 to Implementation of 2025 Legislation will expand the
15 topic.

16 The rules for today's hearing are listed
17 after the CR 102 Proposed Rules title. We'll go
18 through the proposed rules in the order they appear on
19 the website.

20 Before we begin, are there any questions
21 about the purpose of today's meeting or where to find
22 the proposed rules?

23 Remember, you can unmute yourself using your
24 Teams window or by hitting star six if you are joining
25 by phone.

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1 If you are not providing testimony, please
2 remember to keep yourself muted throughout the
3 hearing. If you're calling in for the hearing, please
4 do not place this meeting on hold to take another
5 call. The hearing cannot proceed if there is hold
6 music or messages played while the call is on hold.

7 Are there any questions about who we are or
8 why we're here?

9 All right. We will go ahead and formally
10 begin the hearing.

11 Pursuant to the authority given under
12 Washington State Law RCW 50A.05.060, Chapter 42.30 RCW
13 of the Open Public Meetings Act and Chapter 34.05 RCW
14 of the Administrative Procedure Act this hearing is
15 hereby convened.

16 For the record, this hearing is beginning at
17 9:05 a.m on November 25th, 2025 online and by
18 conference call.

19 This hearing is convened to consider
20 testimony concerning Paid Family and Medical Leave
21 rulemaking.

22 Notice of this hearing was filed and
23 published in the Washington State Register on
24 October 22nd, 2025 as WSR No. 25-21-149, was sent to
25 interested parties and was posted on the department's

1 web page.

2 My name is Jason Barrett and I am the lead
3 Policy Analyst for the Leave and Care Division of the
4 Washington State Employment Security Department.

5 I represent Commissioner Cami Feek as the
6 hearing officer presiding at this public rulemaking
7 hearing.

8 There are other members of the Leave and
9 Care Policy Team attending this hearing. I would ask
10 that you please introduce yourselves by name and
11 title.

12 MS. BENIN: Good morning, I'm Jeanette
13 Benin. I'm the Rules Coordinator for the Leave and
14 Care Division of the Employment Security Department.

15 MR. CAIN: Good morning. I'm Brett Cain. I
16 am a policy analyst for the Leave and Care Division
17 and I work on the Policy Rules Team for the Employment
18 Security Department.

19 MR. BARRETT: Please be advised that this
20 hearing is being transcribed by a court reporter and
21 is also being recorded by the Microsoft Teams
22 platform.

23 The transcript and recording will become a
24 part of the official rulemaking file.

25 To facilitate this transcription, please

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1 state and then spell your name before your testimony.
2 If you are here in a representative capacity, please
3 include who you are providing testimony on behalf of.

4 Please also note that this hearing is
5 convened to consider comments on the proposed rules.

6 Because of the formal nature of this hearing
7 we are unlikely to answer any questions you may have.
8 If you do pose a question I would ask you to rephrase
9 your question as a comment.

10 Questions can be emailed to us at
11 paidleave@esd.wa.gov, where our customer support staff
12 will respond to your questions.

13 Written comments on the proposed rules will
14 be accepted through today by email at
15 rules@esd.wa.gov.

16 A concise explanatory statement of the
17 agency's reasons for adoption of the rules, including
18 a summary and response to all comments received after
19 the publication of the Proposed Rules, will be placed
20 in the permanent rulemaking file and posted online.

21 This document will be sent to all interested
22 parties who have signed up to receive Paid Family and
23 Medical Leave rulemaking emails.

24 We will begin with Brett Cain who will
25 provide a brief explanation of the proposal.

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1 MR. CAIN: Thank you, Jason.

2 The proposed rules for this hearing are
3 required for the implementation of engrossed Second
4 Substitute House Bill 1213 and Substitute Senate Bill
5 51.91, both of which were passed in this year's
6 legislative session and signed by the governor.

7 The rules provide needed clarity to
8 employers and employees related to the new requirement
9 pertaining to job protection, small business grants,
10 health insurance continuation, minimum claim duration,
11 and other topics as mandated by these two bills.

12 There is also a rule pertaining to deadlines
13 for filing of a petition with the Commissioner's
14 Review Office.

15 I encourage you all to read the text of the
16 rules along with the supporting documents that are
17 available on the rulemaking web page for a more robust
18 understanding.

19 Thank you for your interest and
20 participation in the rulemaking efforts and we look
21 forward to hearing your comments today.

22 MR. BARRETT: Thank you, Brett.

23 We will now go through each rule
24 individually, outline the proposed amendments to each
25 rule, and accept comment on each rule.

1 All attendees are currently muted. I you
2 wish to speak you can unmute yourselves through your
3 Teams window or by pressing star six if you are
4 joining by phone.

5 When you testify, please clearly state your
6 name, spell your last name, and state who you
7 represent if you are here in a representative
8 capacity.

9 When you finish testifying, please mute
10 yourself through your Teams window or hit star six
11 again on your phone.

12 With that we'll move to our first rule,
13 WAC 192-500-010 Employer.

14 This amendment changes the definition of
15 employer to align with the new definition implemented
16 by SB 5191. This change relates exclusively to what
17 entity is considered the employer of certain
18 Washington dockworkers.

19 Are there any comments on this rule?

20 Moving on to WAC 192-500-185 Waiting Period.

21 HB 1213 reduces the minimum duration of
22 missed employment from consecutive hours to four for
23 employees claiming benefits. This amendment aligns
24 the relevant WAC with that change.

25 Are there any comments on this rule?

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1 MR. HOLBROOK: I have a comment.

2 THE REPORTER: Okay. And who are you?

3 MR. HOLBROOK: My name is Kyle Holbrook.
4 I'm attending here on behalf of Child's Health, a
5 nonprofit employer.

6 MR. BARRETT: Okay. Go ahead with your
7 comment.

8 MR. HOLBROOK: I would just like to say that
9 I intermittently have had typically one of the most
10 disruptive types of leaves that we deal with
11 especially as the Washington Paid Leave Act.

12 Basically the new rule is taking away our
13 own visibility of why an employee is claiming leave,
14 and so it's really difficult for us to judge when an
15 employee calls out using intermittent leave if they're
16 doing so in good faith.

17 And so far I haven't seen that the state is
18 looking further into claims. Although we do have a
19 claim that we have reported we have not received
20 feedback.

21 And so this just seems to be something that
22 is allowing employees who might be using this resource
23 in bad faith a much easier time of doing so.

24 MR. BARRETT: Thank you for your comment,
25 Kyle.

1 Are there any other comments on this rule?

2 Moving on to WAC 192-510-040 How does an
3 employer's size affect liability for premiums and
4 eligibility for small business assistance grants and
5 WAC 192-510-050 How will the department assess the
6 size of new employers?

7 HB 1213 implemented a change in how the
8 department will calculate an employer's size for the
9 purposes of premium liability and small business grant
10 eligibility.

11 The new method of counting requires an
12 employer to submit to the department an employee count
13 based on the last day of the quarter.

14 The department will average that quarter
15 across the previous four quarters to determine an
16 employer's size for the subsequent calendar year.

17 This change mostly impacts employers who
18 felt that their size was artificially inflated by the
19 current method of counting, which averages all
20 employees who received any wages over the four-quarter
21 period.

22 If an employer wishes to be sized according
23 to the new method, they can submit the actual number
24 of employees they have on the last day of each quarter
25 online or in another manner approved by the

1 department.

2 If an employer does not wish to take this
3 extra step, the department will size that employer
4 using the current method.

5 The amendment also clarifies who counts as
6 an employee for the purposes of reporting the head
7 count on the last day of each quarter.

8 Are there any comments on these rules?

9 Moving on to WAC 192-560-010 Which
10 businesses are eligible for small business grants?

11 This is the first of two rules related to
12 changes mandated by the passage of HB 1213 associated
13 with small business grants.

14 The bill made a few changes to how SBA
15 grants work. This particular bill is being amended to
16 point to the new requirements under RCW.

17 Are there any comments on this rule?

18 Moving on to WAC 192-560-020 What is the
19 application or process for a small business assistance
20 grant?

21 This rule implements the required changes to
22 small business assistance grants. Businesses with
23 fewer than 50 employees are now only required to
24 submit an attestation rather than documentation
25 substantiating that a temporary employee was hired or

1 significant costs were incurred as a result of an
2 employee's use of paid Family or Medical Leave. Large
3 employers are still required to submit documentation.

4 In addition, an application for a grant that
5 is denied will no longer count against an employee's
6 annual limit of ten applications.

7 Are there any comments on this rule?

8 Moving on to WAC 192-560-011 What small
9 business grants are available under pandemic leave
10 assistance?

11 This rule is being stricken as a result of
12 pandemic leave assistance grants having sunsetted.

13 Are there any comments on this rule?

14 Moving on to WAC 192-620-005 What is the
15 minimum claim duration?

16 HB 1213 reduces the minimum duration of
17 missed employment from eight consecutive hours to four
18 for employees claiming benefits. This amendment
19 aligns the relevant WAC with that change and removes
20 an example that is no longer relevant.

21 Are there any comments on this rule?

22 Moving on to WAC 192-700-008 What is the
23 timeframe in which an employer may apply federal
24 Family and Medical leave to a period of paid Family
25 and Medical leave job protection.

1 The passage of HB 1213 offers employers the
2 option to apply previously used FMLA leave to a period
3 of future PFML job protection if the combined job
4 protection between the two programs for that employee
5 would exceed a maximum of 16 weeks (or 18 in the event
6 of a pregnancy-related disability) in a 52-week
7 period.

8 To retain this right, employers must provide
9 a notice to employees when their FMLA begins and
10 continue to provide the notice on a monthly basis.

11 This rule clarifies the time period in which
12 this option may be exercised.

13 Are there any comments on this rule?

14 I see Daris Freeman.

15 THE REPORTER: Who? Who is it?

16 MR. BARRETT: Daris, could you spell your
17 name for us?

18 MS. FREEMAN: Daris, D A R I S. Freeman, F
19 R E E M A N.

20 I'm with Unum.

21 MR. BARRETT: Thank you, Daris. Go ahead.

22 MS. FREEMAN: So on this particular rule I
23 think there's a need -- and I don't know if you want
24 to talk about it now or if when we get to Rule 2025 --
25 there's a need for clarity on what exactly that

1 52-week period is.

2 008, the current rule we're talking about,
3 explains it as kind of what I would call a measured
4 forward period where you're looking from the first day
5 of leave forward for 52 weeks.

6 But when you get to new Rule 025 it talks
7 about looking backward 52 weeks to the amount of leave
8 already taken under FMLA.

9 So I think we've got conflicting 52-week
10 periods between those two rules.

11 So comment one would be aligning those and
12 being clear what 52-week period of time an employer is
13 going to be looking at to determine if they have taken
14 all 16 weeks or 18 consecutive of their medical
15 protected time.

16 The other comment with that is it also
17 references an existing, like if someone already has an
18 existing claim year that becomes their claim year.

19 So I would ask for clarification on two
20 things.

21 One, will the employer have access to
22 existing claim years and what those are?

23 And then, two, how that works when a claim
24 year started prior to 1-1-26.

25 Is that claim year still in force or is this

1 only from 1-1-26 forward claim years established after
2 that time period.

3 MR. BARRETT: Thank you, Daris.

4 I see Molly Carlson's hand.

5 MS. CARLSON: Thank you. Molly Carlson, C A
6 R L S O N, from Frontier Behavioral Health.

7 I have two comments. One is that this is
8 very challenging with intermittent leaves of absence.
9 One of the requirements for notification is that when
10 the employee reaches the 14th day of absence, we have
11 to -- if we're going to enact the job protection
12 provision, the new one, we have to start those
13 notifications on the 14th day of absence.

14 When it's intermittent leaves that's
15 extremely difficult. Sometimes that intermittent
16 leave could be for not even a full day.

17 We currently, and I think most employers,
18 don't have tracking mechanisms in place for a large
19 volume of employees and a large volume of absences to
20 know when people who have intermittent leave achieve
21 that 14 days.

22 My second comment is under the requirement
23 to provide the employee with basically a countdown of
24 how much protected leave they have left. When we
25 don't have that information available from PFML, it's

1 very difficult to project. And in the former
2 rulemaking section that I was in the Department of
3 Health's feedback was just to guess.

4 I think that is very concerning that we're
5 just supposed to guess at how much protected time that
6 someone has when it's a mandated component of the
7 notification requirement.

8 What if we guess wrong? Could that come
9 back on employers and get us in trouble somehow for
10 violating people's leave protection.

11 Those are my comments.

12 MR. BARRETT: Thank you very much, Molly.

13 Candice Bock. I see your hand.

14 MS. BOCK: Thank you. Candice Bock.

15 Candice, C A N D I C E. Bock, B O C K, representing
16 the Association of Washington Cities.

17 I would echo the comments of the previous
18 speakers and just elaborate on the challenge of
19 implementing this without more data and information
20 from the department about the leave available.

21 Again, as was mentioned by a previous
22 speaker, particularly in regards to intermittent
23 leave, but just our ability to manage this.

24 We're going to need more information about
25 how much leave has been taken and how much leave

1 remains. And that's information only the department
2 has and employers aren't necessarily privy to that.

3 So thank you for the opportunity to comment
4 on this section.

5 MR. BARRETT: Thank you, Candice.

6 Kassandra Patton.

7 MS. PATTON: Yes, Kassandra Patton.

8 K A S S A N D R A. Patton, P A T T O N,
9 with Tri-Cities Child Agency.

10 I also, my comment would be mirroring
11 concerns with the utilization of FMLA being in hours,
12 days or weeks, or even minutes, dependent on how the
13 employer uses for other types of leave.

14 This can create a misalignment with the
15 utilization of Washington paid leave with that
16 four-hour increment, even now with the eight-hour
17 increment.

18 So clarification and transparency around how
19 many hours an employee is eligible for so that we can
20 align FMLA utilization with Washington paid leave
21 would be my comment.

22 MR. BARRETT: Thank very much, Kassandra.

23 Are there any other comments on this rule?

24 Judy?

25 MS. SPRECHER: Yes, Judy Sprecher, S P R E C

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1 H E R.

2 I work for a CPA firm in HR and I wanted to
3 comment on reaching out to them monthly. We have
4 always respected people when they're on leave and not
5 bothered them with anything so I disagree with having
6 to bug them once a month.

7 MR. BARRETT: Thank you, Judy.

8 Kyle, I see your hand.

9 MR. HOLBROOK: Yes, thank you. This is Kyle
10 Holbrook on behalf of Child's Health.

11 My comment was it seems like this rule has a
12 blind spot in terms of how we're seeing Washington
13 paid leave and FMLA utilized.

14 It sounds like this rule either assumes that
15 employers have the right to dictate that an employee
16 has or utilizes FMLA at the same time as Washington
17 paid leave or assumes that employees will use FMLA
18 before taking Washington paid leave, given that the
19 new changes will allow employees to be eligible for
20 Washington paid leave before they're eligible for FMLA
21 and they are explicitly given job protection with the
22 Washington paid leave alone.

23 I don't see that there's any accounting for
24 an employee who does their research and knows that
25 they have job protections with solely Washington paid

1 leave and then thus notifies their employer that they
2 are refusing to have FMLA be applied.

3 So that theoretically prevents stacking
4 when an employee asks to use FMLA at the same time as
5 Washington paid leave or before Washington paid leave.
6 It does not adequately address stacking if an employee
7 might state that they are going to use Washington paid
8 leave first and refuse to have FMLA be applied during
9 that time.

10 That's my comment. Thank you.

11 MR. BARRETT: Thank you, Kyle.

12 Molly.

13 MS. CARLSON: Another comment, Molly Carlson
14 from FBH.

15 There's also nothing in the rules that we
16 can find that really addresses the issue of employees
17 who are approved for a fewer amount of hours per week
18 than what their current job is.

19 For example, an employee, based on their
20 hours worked previously, may qualify for 16 hours of
21 PFML per week, however, we hire them into a 40-hour a
22 week position and so they're only drawing down 16
23 hours of PFML but maybe they're absent for 40 and so
24 there's a gap.

25 And the rules aren't very clear on what to

1 do in that circumstance. And it would be great if
2 somewhere along the way there was more clarity on that
3 whole situation.

4 Thank you.

5 MR. BARRETT: Thank you, Molly.

6 Are there any other comments on this rule?

7 Anthony.

8 MR. ALBANESE: Hi there. My name is Anthony
9 Albanese. I work for a large third party leave
10 administrator.

11 MR. BARRETT: Anthony, would you mind
12 spelling your last name for our court reporter?

13 MR. ALBANESE: Certainly. A L B A N E S E.

14 MR. BARRETT: Thank you.

15 MR. ALBANESE: So we have general concerns
16 about the monthly notice and how exactly it's supposed
17 to work with intermittent leaves.

18 It's a particularly onerous requirement on
19 employers especially, and administrators, who are
20 handling potentially thousands of employees over
21 multiple companies.

22 For example, we're particularly concerned
23 about how we're supposed to generate this information
24 for intermittent leaves when we don't know the exact
25 amount of usage of the leave looking forward that that

1 employee is going to use such that we can adequately
2 notify them on how much they are being drained.

3 And so we'd really appreciate some clarity
4 about what the contents of this monthly duration would
5 be for intermittent leaves specifically.

6 I have had some conversations with others in
7 the industry about this potentially coming up,
8 apparently, in the 2008 FMLA regulations. They tried
9 to bring those proposed regulations, they tried to do
10 something similar to this about notification around
11 intermittent leaves.

12 And my understanding from some colleagues is
13 that there was a lot of pushback from employers at
14 that time and where they settled was allowing
15 employees with intermittent leaves to reach out to
16 their employer and having -- or being required to
17 provide them this information at least once every 30
18 days.

19 So maybe also something to consider would be
20 some alternative ways to complying or some conflicts
21 to complying, specifically when it comes to
22 intermittent leaves.

23 MR. BARRETT: Thank you, Anthony.

24 Are there any other comments on this rule?

25 Moving on to WAC 192-700-015, How is

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1 employer size determined for employment protection?

2 HB 1213 reduces the number of employees
3 required for an employer to observe job protection
4 rights for an employee who takes paid family or
5 medical leave.

6 The threshold will be lowered to 25
7 employees beginning next year, 15 beginning in 2027,
8 and finally eight employees beginning in 2028.

9 This amendment aligns the relevant WAC with
10 those changes. The amendment also offers clarity on
11 who counts as an employee for the purposes of job
12 protection. The definition here is very closely
13 aligned to the definition used by the federal Family
14 and Medical Leave Act.

15 Are there any comments on this rule?

16 Julie.

17 MS. SALVI: Good morning. I am Julie Salvi,
18 S A L V I, representing the Washington Education
19 Association.

20 And I just want to make a quick comment on
21 the very end of subsection three, that last sentence.

22 I would like to seek some clarity maybe just
23 with the comment at the end of that sentence that it
24 is for the purposes of this section.

25 I am raising that because the concept of

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1 employer/employee relationship has also been part of
2 our school Employee Benefit Board Program through HCA.

3 And I want to be clear that this definition
4 is for the purpose of this program and not related to
5 the concepts in SEP.

6 Thank you.

7 MR. BARRETT: Thank you, Julie.

8 Are there any other comments on this rule?

9 Moving on to WAC 192-700-020 When does an
10 employer need to provide a continuation of health
11 benefits to an employee who is on paid family or
12 medical leave?

13 HB 1213 disassociated health benefit
14 continuation with the employee's current use of FMLA.

15 Beginning in 2026, an employee will
16 generally be eligible for health benefit continuation
17 as long as they are also eligible for job protection
18 under title 50A RCW.

19 The rule also provides that, if and when an
20 employee provides unequivocal notice of their intent
21 to not return to employment with that employer, the
22 obligation for the employer to continue health
23 insurance benefits will cease.

24 Are there any comments on this rule?

25 Deidra. Deidra, if you're speaking, we

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1 cannot hear you.

2 MS. NGUYEN: Can you hear me now?

3 MR. BARRETT: Yes, there you are.

4 MS. NGUYEN: Deidra Nguyen. I'm diligently
5 spelling out my name, Deidra, D E I D R A. Nguyen, N
6 G U Y E N.

7 I'm an employment attorney with Littler
8 Mendelson but here on my own behalf.

9 And my comment is that the rule does not
10 clarify health continuation obligations if the
11 employment relationship ends in circumstances other
12 than the employee giving unequivocal notice that they
13 do not intend to return to work.

14 So there might be a variety of circumstances
15 in which an employee who is on PEML ends up having
16 their employment separated.

17 And the rule would profess to require
18 healthcare continuation even after the employment
19 relationship ends, which would conflict with the vast
20 majority, if not all of, health insurance plans that
21 generally provide for continuation only through the
22 end of the month in which the separation date falls.

23 MR. BARRETT: Thank you, Deidra.

24 Are there any other comments on this rule?

25 Moving on to WAC 192-700-025, What is the

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1 timeframe in which an employer may apply federal
2 family and medical leave to a period of paid family
3 and medical leave job protection?

4 This rule relates to the employer's ability
5 to apply a period of FMLA leave to a period of PFML
6 job protection as previously described. It clarifies
7 notice requirements, timelines and other details of
8 the process through which an employer may exercise
9 this right.

10 Are there any comments on this rule?

11 Julie.

12 MS. SALVI: Yes. Julie Salvi, S A L V I,
13 with the Washington Education Association.

14 I'm interested in seeing either language
15 added under subsection 5.A or as a new example that
16 would give a nod to the role of collective bargaining
17 that the employer making that choice not to retain the
18 option could involve something that has been
19 collectively bargained.

20 MR. BARRETT: Thank you, Julie.

21 Before we continue, I do want to correct
22 myself. I apologize.

23 The title of WAC 192-700-025 is actually How
24 does an employee's use of leave under the federal
25 family and medical leave act affect employment

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1 restoration rights?

2 I apologize, I misread the title.

3 But moving on to Candice.

4 MS. BOCK: Thank you. Again, Candice Bock,
5 Candice, B O C K, representing the Association of
6 Washington Cities.

7 And for this section we would just like to
8 suggest that there is acknowledgment that EMLA can be
9 calculated, I believe, four different ways under
10 federal law, with rolling look-back being one of those
11 options.

12 And so we want to make sure that as this is
13 being implemented it takes into account and recognizes
14 that there are multiple lawful ways for an employer to
15 look at the EMLA twelve-month period and make sure
16 that all of those are legitimate under this WAC.

17 Also, I would like to ask that as the
18 department is looking at enforcement mechanisms with
19 compliance here that there's acknowledgement of good
20 faith efforts.

21 This section and others rely on estimates of
22 information provided by the employee and the
23 department, so the employer may not have perfect
24 information.

25 And as has been noted multiple times, that

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1 this is pretty complicated to calculate and determine,
2 so asking for some good faith acknowledgment with
3 compliance before there is any enforcement action
4 taken.

5 Thank you.

6 MR. BARRETT: Thank you very much.

7 Daris Freeman.

8 MS. FREEMAN: Daris Freeman. First name D A
9 R I S. Last name, Freeman, F R E E M A N, with Unum.

10 A couple of comments. I already commented
11 on the issue I think we have a conflict between 008
12 and here and how the 52-week period is calculated, so
13 that we are clear. When an employee gets that "job
14 protection" back, when does it replenish? And that
15 becomes key if they use all that time, when do they
16 have more to use?

17 A couple of things, subsection four says
18 that employers that choose to offset job protection as
19 described in subsection one, I think what you're
20 referring to is the job protection itself, not the
21 offsetting but it's a little -- a little unclear.

22 So just maybe think about phrasing there. I
23 think it's the right reference but it caused me a
24 little confusion.

25 Subsection three, I'll be honest, I've read

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1 it I don't know how many times and I'm still not
2 exactly sure what the intent of that subsection is.

3 So again, I just would say maybe look at the
4 wording there for some clarity.

5 And then subsection five, when it talks
6 about sending the notice and when that ceases, I would
7 recommend just some cleaner language as to whether it
8 ends when their -- the earlier of their exhaustion of
9 the twelve, you know, 16, to get their entitlement to
10 job protection or the duration of their claim.

11 So if all they used was six weeks of leave
12 and they returned, we wouldn't want to have to keep
13 sending a notice through like a twelve-week period of
14 time.

15 And it's just not -- I think that's the
16 common sense approach, but it's not particularly clear
17 with the way this is written so would recommend some
18 clarity there.

19 And then the only other thing, just to keep
20 in mind, there's an FMLA on the notice.

21 So that's it.

22 MR. BARRETT: Thank you, Daris.

23 Deidra.

24 MS. NGUYEN: Deidra Nguyen, N G U Y E N.

25 Regarding the notice that needs to be provided,

1 subsection five refers to the notice described in
2 subsection two. I think that is an erroneous citation
3 to the subsection there.

4 Also, I have noted in previous rulemaking
5 sessions that "designation" is a legal term of art
6 under the FMLA and these rules would profess to
7 require FMLA designation in contravention of the FMLA
8 and its implementing regulations.

9 Under the FMLA, once an employer has notice
10 that an employee seeks to take FMLA, they have five
11 business days to provide the employee with notice of
12 their rights under the FMLA.

13 The employee then has 15 calendar days to
14 return a certification if the type of leave that
15 they're requesting is the type that requires
16 certification.

17 So we're talking about a 20 calendar day
18 period, or 20-day period, whereas under the PFML rules
19 an employer would be required to designate FMLA leave
20 within five business days of a request.

21 That, as I mentioned, conflicts with FMLA
22 rules. An employee simply does not have, in most
23 cases, the information needed to determine whether
24 leave is FMLA qualifying at that point or not.

25 So the word "designating" or "designation"

1 should not be used because that is conflicting with
2 the designation process under federal law.

3 MR. BARRETT: Thank you, Deidra.

4 Are there any other comments on this rule?

5 Moving on to WAC 191-700-030 Do employers
6 need to provide a notice to employees regarding their
7 employment restoration rights?

8 HB 1213 requires employers to provide a
9 notice to employees after 14 combined days of paid
10 family or medical leave. The rule specifies the
11 content and timing of that notice.

12 Are there any comments on this rule?

13 Deidra.

14 MS. NGUYEN: The rule references a length
15 of leave as being 14 typical work days and in so doing
16 it just refers to leave.

17 It's very imprecise in that perspective. An
18 employee could be taking leave for a whole host of
19 reasons.

20 I believe that the rule is referring to a
21 period of PFML leave for 14 days. That should be
22 clarified.

23 MR. BARRETT: Thank you very much.

24 Molly.

25 MS. CARLSON: Molly Carlson, FBH.

1 I mentioned it before but I just want to
2 re-mention it.

3 That is an unrealistic expectation that I
4 think a lot of employers are going to struggle with,
5 particularly with intermittent leaves. Tracking of
6 when somebody achieves their 14th day of leave of
7 absence under intermittent leave will be very
8 difficult, if not impossible, in some cases.

9 MR. BARRETT: Thank you, Molly.

10 Candice.

11 MS. BOCK: Hello again, Candice Bock, C A N
12 D I C E, B O C K, representing the Association of
13 Washington Cities.

14 We are looking for some clarification on
15 whether or not this section applies in all cases or if
16 only the employer is addressing the stacking
17 limitation.

18 Additionally, as has been mentioned, it's
19 very difficult for employers to know when the
20 department deems an employee to have exhausted their
21 PFML because it depends on how the department
22 calculates usage and whether or not they share that
23 information with employers.

24 So we'd like to ask that more information is
25 shared with employers and that, again, the

1 department -- the employer is given sort of the
2 benefit of the doubt in making their estimations about
3 when leave is exhausted regarding notice and
4 restoration of rights.

5 Thank you.

6 MR. BARRETT: Thank you.

7 Denise Johnson.

8 MS. JOHNSON: Yes, my name is Denise
9 Johnson. D E N I S E. Last name Johnson, J O H N S O
10 N H J O N.

11 I am in HR with Overlake Medical Center and
12 Clinic. Our concern that we would like to have noted
13 is how are we going to be able to clarify if employers
14 do not currently have the infrastructure, bandwidth,
15 head count, et cetera to get out the notices so that
16 we can have our employees avoid stacking.

17 If we don't currently have the bandwidth now
18 and we're not able to implement an organization, will
19 we in the future, is there clarification on if
20 employers can implement this in the future. And, if
21 so, what will the notice period be to employees.

22 Will we need to provide 30 days notice, for
23 instance, if we are going to change and provide the
24 notices in the future.

25 Currently, with the number of our

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1 organization utilizing PFML, we determined that it's
2 approximately 9,000 notices annually and we do not
3 have the head count or infrastructure to determine the
4 intermittent time.

5 When the legislature created this WAC was it
6 determined that organizations had to be responsible
7 for these notices or is there a way that the ESD who
8 actually has access to the information needed with the
9 notices, why isn't the ESD here providing the notices
10 to employees rather than employers?

11 MR. BARRETT: Thank you for that comment.

12 Daris.

13 MS. FREEMAN: Yes, Daris Freeman again, D A
14 R I S, with Unum.

15 I would ask for clarity on -- it's actually
16 in the statute but it didn't get clearly expanded on
17 or interpreted in the rule. The rule just references
18 the statute.

19 It has to do with the fact that the notice
20 has to give the employee the estimated expiration of
21 their right of employment restoration. And that
22 scheduled workday, where this gets confusing is when
23 you don't know when an employee is returning to work,
24 and therefore you may be, whether it's an
25 administrator or as an employer, providing just the

1 FMLA leave through their next, you know, until they
2 see their doctor and they get an update from them.
3 They could return to work, they could need an
4 extension, they could stay out and not get approved.

5 The concern is we don't want to be giving an
6 employee a date beyond what they're actually approved
7 for leave for, because that could lead them to believe
8 they have a right to restoration beyond the time that
9 they're actually medically certified.

10 But where you don't have a return to work
11 date, you know, there is potentially more time, but
12 again, there's going to have to be a requirement for
13 them to do that.

14 So my recommendation is that each of those
15 notices would align with, you know, right now you're
16 approved through this day and, therefore, that's your,
17 you know, where your job protection ends.

18 However, if you need more leave and you've
19 got more time, you know, you're giving them a balance
20 of time anyway.

21 Just to set the right expectations with
22 employees and not mislead them in any way as to what
23 may or may not be available.

24 MR. BARRETT: Thank you, Daris.

25 Anthony.

1 MR. ALBANESE: Anthony Albanese again, A L B
2 A N E S E. I work for a leave administrator.

3 Another issue with both of these notice
4 provisions and these regulations is that there is not
5 clarity on how this will work for leaves that are in
6 progress through January 1, which is the effective
7 date.

8 So if someone out on a leave starting in
9 December or November, whether an employer can start
10 enforcing the stacking provision as of January 1 or if
11 it only applies to leaves that start after -- on or
12 after January 1.

13 So some clarity around that either in these
14 regulations or some further guidance from the state
15 would be appreciated.

16 MR. BARRETT: Thank you for that, Anthony.

17 Ann.

18 And you're on mute, if you're speaking.

19 MS. DANNELLY: I apologize.

20 Can you hear me now?

21 MR. BARRETT: Yes.

22 MS. DANNELLY: Ann Dannelly, D A N N E L L
23 Y, and I'm with Olympic Medical Center.

24 I just want to echo what Anthony said. We
25 have a situation where someone started leave back in

1 May and it's going to go through until 2026.

2 And so if we have not provided the required
3 notifications to them beginning in May of 2025, are we
4 not able to enforce the rules?

5 So there is some unclarity about the leaves
6 going from 2025 to 2026.

7 MR. BARRETT: Thank you, Ann.

8 Are there my other comments on this rule?

9 Moving on to WAC 192-800-100 What is the
10 process for filing a petition for review and any reply
11 to the petition for review?

12 This rule slightly modifies timelines
13 related to petitions for review by the Commissioner's
14 Review Office.

15 Are there any comments on this rule?

16 So that is our final rule.

17 I want to take a moment and ask if there is
18 any additional testimony on any of the proposed rules
19 included in today's hearing.

20 Candice.

21 MS. BOCK: Apologies for missing this piece
22 previously.

23 Again, Candice Bock representing the
24 Association of Washington Cities.

25 And this is regarding WAC 192-700-025,

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1 particularly subsection three, which reduces -- which
2 addresses an employer's right to reduce PFML job
3 protection by the duration of leave previously taken
4 under FMLA.

5 The bill, Health Bill 1213 referred to
6 unpaid leave protected by federal FMLA. However,
7 there are instances when an employee is using FMLA but
8 is also taking some kind of accrued leave during that
9 time, effectively making it paid.

10 How will that be interpreted, I guess is the
11 question.

12 Is this intended to only count FMLA that was
13 unpaid? I think we would prefer that it addressed
14 FMLA regardless of whether or not the employee used
15 any accrued leave during the time that they were using
16 FMLA.

17 Thank you.

18 MR. BARRETT: Thank you, Candice.

19 Are there any other comments on today's
20 rules?

21 Deidra.

22 MS. NGUYEN: Yes. I think this probably
23 relates to the minimum claim duration regulation, but
24 it came up in a prior rulemaking situation. I
25 understand that the minimum increment of use -- once

1 the minimum claim duration requirement is satisfied,
2 the minimum increment of use for PEML is one hour.

3 That should be stated explicitly in a rule.

4 MR. BARRETT: Thank you, Deidra.

5 Are there any other comments on today's
6 rules?

7 One final call for any additional testimony
8 on the rules before we wrap up?

9 All right. So we'll go ahead and conclude
10 the hearing, but before I start that process I just
11 want to say how much I appreciate the feedback that we
12 received today.

13 We recognize that this bill changes a lot of
14 aspects of PEML and there are a lot of changes coming
15 for employers fast and hard right now and we really
16 appreciate your feedback and your patience.

17 There is a clamor for additional information
18 and clarity, which I completely recognize and hear it
19 in these hearings and elsewhere.

20 We are providing updates via email to
21 employers over the next several weeks as we get closer
22 to January when these changes go into effect.

23 We are also updating our websites with new
24 information so please keep an eye on those two sources
25 for additional information about a lot of these

1 changes.

2 And again, I just want to express my
3 gratitude and my appreciation for everyone in
4 attendance today and especially those who submitted
5 testimony.

6 And actually I see Rose Henderson here from
7 our advisory committee.

8 Rose.

9 MS. HENDERSON: Thank you, Jason.

10 Rose Henderson with the Washington Retail
11 Association.

12 I understand this is recorded. How
13 accessible is it for us to hear all the comments all
14 over again? Is that through an email to the general
15 email list that you send out?

16 Because I think there have been an
17 incredible number of good comments that I want to
18 bring to the legislature as well.

19 MR. BARRETT: Sure. We will be posting the
20 full transcript on our website after we receive it
21 from our court reporter.

22 So sometime over the next, you know, week or
23 two usually is the timeframe for that and we'll be
24 posting the full transcript on our website.

25 MS. HENDERSON: That's helpful. Thank you.

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1 MR. BARRETT: My pleasure.

2 In conclusion, this hearing was convened
3 today to consider testimony on paid family and medical
4 leave rulemaking.

5 All oral testimony presented at this hearing
6 and written submissions will become part of the
7 official record.

8 The deadline for submission of written
9 comments is by end of the day today, November 25th,
10 2025.

11 You may submit written comments by emailing
12 rules@esd.wa.gov. Comments must be received by the end
13 of the day to be considered part of this rulemaking.

14 A final decision regarding adoption of the
15 proposed rules will be made after all testimony and
16 written comments have been fully considered, which
17 will be on or after December 1st, 2025. The planned
18 effective date of any adopted rules will be January 1,
19 2026.

20 On behalf of Commissioner Cami Feek, thank
21 you for participating in this hearing.

22 This hearing is adjourned at 10:58 on
23 November 25th, 2025.

24 Thank you very much.

25 (Hearing recessed at 9:58 a.m.)

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C E R T I F I C A T E

I, PATRICIA LESSARD, Washington Certified
Court Reporter, do hereby certify:

That the foregoing VERBATIM RECORD OF
PROCEEDINGS was taken before me on Teams and completed on
the 5th day of December, and thereafter transcribed by me by
means of computer-aided transcription. That the transcript
is a full, true and complete transcript of the proceedings.

That I am not a relative, employee, attorney
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