

REALTIME FILE
WASHINGTON EMPLOYMENT SECURITY DEPARTMENT
RULES HEARING
MAY 6, 2020

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>> JASON: We're here today for a Paid Family and Medical Leave rules hearing that will get started around 9:00 a.m. Thank you for joining us in this weird situation we have with the current COVID-19 response. And adjusting accordingly and being available for us today. Just hold on tight.

This is Jason Barrett. I believe an attendee had just put us on hold who was with an organization that offers psychiatric services. When you put us on hold, we heard a message. So if you can avoid putting us on hold for the hearing, that would be great. Thank you very much.

>> Good morning. We'll go ahead and get started. Will someone on the phone please confirm they can hear me?

>> I can hear you.

>> I can hear you.

>> I can hear you.

>> Thank you. And I wanted to give everyone a reminder to please mute your phones as we can hear the background noise when phones are unmuted. Please mute your phones now. So first I want to say good morning. I'm the rules coordinator for the Paid Family and Medical Leave division of the Washington Employment Security Department. We have four on the agenda today. Individual hearings will be held for each topic. The first hearing is regarding definitions. The second hearing is regarding employer notification. The third hearing is regarding the base employment and the fourth is employer maintenance of health benefits. Since each will be held individually, public comments will only be accepted on each topic during that topic hearing. As we move through the order, if you would like to comment on a hearing already closed do so in writing on the web page. That was bit.ly/comment_forum in you browser. We will

continue to accept comments on all topics through the close of business today. Prior to each hearing I will announce the topic and to review the electronic version go to bit.ly/commentforum in your browser. Items listed include hyperlinks to the rules for today's hearing.

We will go ahead and get started. The first hearing today is regarding definitions. And I want to remind everybody again to mute phones through the hearing and then we will give a reminder to unmute if you would like to comment -- reminder to unmute. I will turn it over to Jason.

>> Can you please repeat that web address. It was hard with all of the beeps going off in the background to hear that.

>> B as in boy, it.ly/commentforum.

>> Thank you.

>> JANETTE: If you want the directions again to review the agenda or the comments?

>> I think this could be the comments.

>> Great. Is this meeting for employers or people that have' plied for the family leave.

>> A rules hearing for proposed rules. We have four different rules hearings on the agenda for today.

>> If we have applied for the Paid Family and Medical Leave do we stay online with this?

>> JANETTE: Actually, we are going to address the applications. Go ahead, Jason.

>> JASON: This is Jason Barrett. This is a meeting on proposed regulations for the program. The Paid Family and Medical Leave staff that are on the phone right now do not have access to applications or any records that would be applicable to pending applications at this time.

That is not the primary purpose of this meeting. If you do have questions about a pending application for questions about eligibility or the program in general or what row have to do in order to get the benefit, I would strongly encourage you to visit paidleave.law.gov and you can contact the customer care team and I can give that phone number right now, which is 833-717-2273. That team is more qualified to handle all pending applications and kind of general questions about the program.

This team is for more regulation and kind of a legal aspect of the program.

>> Okay. Can you repeat that number, please?

>> JASON: 833-717-2273.

>> Could you repeat the website?

>> It's 833 --

>> And the website?

>> JASON: [Paidleave.law/](http://Paidleave.law.gov). gov. Bit.ly/commentforum.

>> You are getting a huge amount of feedback.

>> This usually happens if you have someone on a computer as well as a phone.

>> JASON: Just a reminder to please mute your phone until you want to provide comments or your microphone. Great. Thank you. Pursuant to the authority given

under Washington State law RCW 50A.05.060, Chapter 42.30 RCW of the Open Public Meetings Act and Chapter 34.05 of the Administrative Procedure Act this hearing is hereby convened, beginning at 9:08 A.M. on May 6, 2020 by conference call.

The hearing is convened to consider testimony concerning the Paid Family and Medical Leave rulemaking at a high level. This rulemaking amends an existing rule and creates a new rule the Department sees as necessary for proper program implementation. The department is always working to refine and improve the program and this rulemaking is one way to provide clear guidance to the community. Notice of this hearing was filed with the Washington State Register on March 31, 2020 as WSR 20-08-119 was sent to interested parties and was posted online.

My name Jason Barrett, and I'm the lead policy analyst for the Paid Family and Medical Leave Division of the Washington Employment Security Department. I represent commissioner Suzi LeVine as the hearing officer presiding at this public rulemaking hearing. There are staff members from the Paid Family and Medical Leave attending this hearing by phone. Please introduce yourselves by name and title.

>> APRIL: Thank you, everyone, for joining us today for the hearing. I know it is a unique situation. April Amundson.

>> JANETTE: I'm Janette, the policy coordinator for the Paid Family and Medical Leave.

>> JASON: Please be advised that this hearing is being transcribed by a court reporter and the transcript will become a part of the official rulemaking file. To facilitate this transcription, please state and then spell your name before you testify. Please also note that this hearing is convened to consider comments on the proposed rules. Because of the formal nature of this hearing, we are unlikely to answer any questions you may have. If you do pose a question, I will ask you to rephrase your question as a comment. Questions can also be e-mailed to us at paidleave@esd.wa.gov where customer support staff will respond to your question. A concise explanatory statement for the agency's reasons for adoption of the rule including a summary and response to all comments received after the publication of the proposed rules will be placed in the permanent rulemaking file and posted online. This document will be sent to all interested parties to have signed up to receive Paid Family and Medical Leave e-mails. We will begin with April Amundson to provide a brief explanation of the proposal.

>> APRIL: Thank you. A reminder to make sure your microphones are muted so everyone can hear your comments and testimony for today. The Paid Family and Medical Leave act was passed by the Washington state legislature in 2017.

Begin -- state legislature. In January 1, 2019, employers could assess premiums on employee wages and January 1, 2020 Washington workers have been able to apply for the Paid Family and Medical Leave benefits. We had an overwhelming response to the program and continue to make efforts to improve our policy, operations and user experience to the program. This rulemaking is part of an effort to prepare the program to improve the functionality and provide information to the community.

This public hearing covers the topics of the definitions for claim year and sibling. I encourage you to all read the text of the rules for more robust understanding and the

draft rules are intended to interpret and clarify Title 50A of the revised code of Washington. Thank you for your interest and participation in the rulemaking efforts. We consider this a state decided program and our efforts to implement this important program could not be done without your assistance. We look forward to hearing your comments today. Jason -- we will now hear FMLA from those.

>> JASON: We will now hear testimony from those on the phone. When you testify, please speak clearly, state your name, spell your last name and state who you represent if you are here in a representative capacity. Please remember to unmute your phone prior to speaking and remute your phone after you are done providing testimony. We are now ready to accept publishing link comment from those in the room. On the first item on today's agenda. We are only accepting comment on definitions at this time.

>> My name is Kimberly Heffernan.

>> JASON: Go ahead, thank you.

>> KIMBERLY: I have signed up for family leave due to the fact that I have cancer and with the coronavirus I am not able to go in to work.

>> JASON: Do you have a comment on the proposed rule -- on the proposed rule or seeking just general information about the program?

>> KIMBERLY: I'm seeking information about the program to see if I qualify while I'm not working.

>> JASON: For those on the call who are interested in applying for or receiving benefits under Paid Family and Medical Leave, you would be better served by visiting our website which is paidleave.law.gov. Today's meeting is on proposed rulemaking by the agency. So this team is the policy team which specializes in legal interpretations of legislation and regulations. Our care team is better equipped to handle (indiscernible) and I'm happy to share that number again. That number again is 833-717-2273. If you are seeking information about eligibility or how to apply, you can call that phone number and they will be able to assist you better.

>> KIMBERLY: Even though I have applied and it has been submitted.

>> JASON: This team is not part of the customer care team. We are not currently equipped to answer questions about applications or processes or anything like that. That is more in the purview of our customer care team.

>> KIMBERLY: So I will hang up now. Okay.

>> JASON: That's fine. Thank you.

>> KIMBERLY: Thank you.

>> JASON: Any other comments on the proposed rules under the category definition?

>> PATRICIA: I have a comment on the claim year, if I can proceed.

>> JASON: Yes, thank you, Patricia.

>> PATRICIA: For definition of claim year, I note that it removes the provision applicable to family leave where the claim year begins. On the Sunday of the week of the date of the birth or placement of the child. And the new definition is now the claim

year is the date the eligible employee files a complete application for benefits and Saturday 62 weeks later.

My comment is considering that the rules are expected to take effect, I believe the initial time line was June 11, can we have some clarification on how the change in definition affects the claims already filed and approved?

So when the rules were initially the claim year could be the date of the birth or placement of the child, for earlier claims that have had that claim year begin already, what would the new rule -- how would the new rule affect those claims that are already existing or in flight.

And perhaps we do this by another example.

>> JASON: So you are seeking clarity on how the amendment to the definition of claim year would affect applications that have already been filed.

>> PATRICIA: That's correct.

>> JASON: We will take that comment. Thank you, Patricia.

>> PATRICIA: Thank you.

>> JASON: Are there other comments on the proposed rules or definitions?

>> MARILYN: This is Marilyn Watkins with the Paid Family and Medical Leave medical advisory committee. Thank you for submitting the rules and I just want to basically support these definitions as proposed. Thank you.

>> JASON: Thank you, Marilyn.

>> MAGGIE: This is Maggie Humphreys, and I would like to echo the support for the rules proposed.

>> I didn't hear the last.

>> MAGGIE: I want to echo Marilyn's comment and support these definitions as proposed.

>> Okay.

>> JASON: Are there other comments on the proposed rules for definitions?

>> Hello?

>> JASON: Hello. We are accepting comments right now on the proposed rules for definitions. If anybody would like to provide comments, please unmute your phone and testify.

>> Well, this is my first time that I do this and I don't really know much about it and I am in Spanish, I can speak English and I can understand, but I may be in worse -- you can definition, I don't know. I just want to be more clearly in you guys can have an interpreter for me or how this is going to be worked.

>> JASON: If you are seeking general information about the Paid Family and Medical Leave program, you can visit our website which is paidleave.law.gov or call our customer care team which can be reached at this phone number, 833-717-2273. Today's phone call is about proposed regulations for the program.

>> Okay.

>> So which one is my status on the application that I gave two months ago?

>> JASON: Yes, the customer care team is better equipped to handle questions about specific applications. Call that number which I'm happy to provide again If you would like to get an update on the application.

>> Okay.

>> JASON: A that number again is 833-717-2273.

>> 833-717-7273?

>> 833-717-2273.

>> 2273. Okay.

>> JASON: And the customer care team will be able to assist you.

>> Are there any other comments for proposed rules for definitions at this time?

>> I just -- I lost my baby so I don't know If you guys need a proof of those things, too, or should I have someone can help me to fill out the application.

>> JASON: You -- so there are several people on the call and I'm asking kind of a general group If there are other comments on the rules? If you are looking for information about your specific application, you should call that phone number that I provided.

>> Okay. So I am going to call first and see how they can -- how it is going to be my application. So that If I need something else. Thank you.

>> JASON: Are there any other participants looking to provide comment on the definition of rules at this time?

>> Is there a place where we can review the definitions that were presented earlier?

>> JASON: Yes, If you go to the website address (indiscernible) bit.ly/commentforum.

You request go under the info tab. Under rules meetings and you will see a link to an agenda to today's meetings. That contains links to the rules that we are discussing today.

>> Could you repeat that url one more time.

>> JASON: Yeah, it's bit.ly/commentforum.

>> B as in boy, I as in indigo, T as in Tom dot L as in Lucy, Y as in yellow/comment forum. C-o-m-m-e-n-t f-o-r-u-m.

>> Got it, thank you.

>> And under the info tab, you can find a link to today's rules meeting and the agenda there will list all of the rules or have links to all of the rules that we are discussing today.

>> JASON: Great. Thank you. I'm going to ask one more time If anybody would like to provide comments on the rules definitions.

>> MICHELLE: Michelle Czitkovic.

>> JASON: Please go ahead.

>> MICHELLE: My comment is that the proposed definition of claim year could be confusing of individuals If it is the Sunday of the week rather than the actual date of the event.

Thank you.

>> JASON: Thank you very much for that comment. Any other attendees who wish to provide testimony on the definition today?

In conclusion, this hearing was convened to consider testimony on Paid Family and Medical Leave rulemaking.

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

The deadline for submission of written comments is 5 pm today, May 6, 2020. You may submit written comments online by entering bit.ly/commentforum in your browser. Comments must be received by today's deadline to be considered part of this rulemaking.

A final decision regarding adoption of the proposed rules will be made after all testimony and written comments have been fully considered, with a target date of May 13, 2020.

On behalf of Commissioner Suzi LeVine, thank you for participating in this hearing.

This hearing is adjourned At 9:29 a.m. on May 6, 2020.

>> Excuse me. Are we covering employer know the fix and health benefits today?

>> JASON: There is a series of hearings today. We have an individual hearing for each topic. Each topping we will open a hearing and receiving comment and then closing it and then moving on to the next one. So that was the first hearing on definitions. We have more to go which we will open momentarily.

>> Excuse me. (indiscernible) to comment on each topic.

>> JASON: If you are looking for just general information about the program or an update on your application, I would like to refer you to the customer care team which is more equipped to handle questions of that nature. They can be reached at 833-717-2273. That number is 833-717-2273.

>> So I do join it meeting, to join this conference, do we have to (indiscernible).

>> JASON: Are you looking for information about your application or are you looking to submit comments on the proposed rules?

>> Looking for information about my application. They sent me this e-mail and asked me to join this meeting today so I don't know what the meeting is all about.

>> JASON: So this meeting is about proposed regulations around the program. If you are looking for information about the program or your application, I would encourage you to contact the customer care team and I can give you that phone number again If you would like.

>> Yeah, I have the phone number already.

>> JASON: Okay. They are better equipped to answer questions about your individual application. We are here today to discuss regulations about the program.

>> Okay. Thank you so much.

>> JASON: Thank you. And just one final reminder If folks could mute their phone when they are not speaking, that would be helpful, thank you.

>> JANETTE: We will move on to the second hearing. The second hearing on the agenda today is regarding Employer Notifications. Please remember that during this

hearing we will only allow testimony and public comment on this topic. Again, a reminder to mute your phones while others are talking. Thank you.

>> This is Michelle Heaton with Neil Jones. I process a lot of the leave of absences. Michelle is Michele.

>> Sorry. I'm actually going to interrupt you.

>> JASON: Sorry, I am going to interrupt you because this is a formal hearing and I have to read statements before we open up the floor for comments.

>> Okay.

>> JASON: If you wouldn't mind holding on for a few minutes, I appreciate that.

>> Okay.

>> JASON: Pursuant to the authority given under Washington State Law RCW 50A.05.060, Chapter 42.30 RCW of the Open Public Meetings Act, and Chapter 34.05 of the Administrative Procedure Act, this hearing is hereby convened.

For the record, this hearing is beginning at 9:33 a.m. on May 6, 2020 by conference call.

This hearing is convened to consider testimony concerning the Paid Family and Medical Leave rulemaking. At a high-level, this rulemaking amends an existing rule the department sees as necessary for proper program implementation. The department is always working to refine and improve the program and this rulemaking is one way to provide clear guidance to the community.

Notice of this hearing was filed with the Washington State Register on March 31, 2020, as WSR number 20-08-121, was sent to interested parties, and was posted online.

My name is Jason Barrett and I am the Lead Policy Analyst for the Paid Family and Medical Leave Division of the Washington State Employment Security Department.

I represent Commissioner Suzi LeVine as the hearing officer presiding at this public rulemaking hearing.

There are staff members from the Paid Family and Medical Leave Policy Team attending this hearing by phone. Please introduce yourselves by name and title.

>> APRIL: Hello again. Thank you for joining us today. My name is April Amundson. I'm the Paid Family and Medical Leave rules and policy manager. Thank you for joining us today.

>> JANETTE: And I'm Janette, rules coordinator for the Paid Family and Medical Leave program.

>> JASON: Please be advised that this hearing is being transcribed by a court reporter and the transcript will become a part of the official rulemaking file. To facilitate this transcription, please state and then spell your name before your testimony.

Please also note that this hearing is convened to consider comments on the proposed rules. Because of the formal nature of this hearing, we are unlikely to answer any questions you may ask. If you do pose a question, I will ask you to rephrase your question as a comment. Questions can also be emailed to us at paidleave@esd.wa.gov, where our customer support staff will respond promptly.

A Concise Explanatory Statement of the agency's reasons for adoption of the rule, including a summary and response to all comments received after the publication of the Proposed Rules, will be placed in the permanent rulemaking file and posted online. This document will be sent to all interested parties who have signed up to receive Paid Family and Medical Leave emails.

We will begin with April Amundson who will provide a brief explanation of the proposal.

>> APRIL: Thank you, Jason and Janette. The Paid Family and Medical Leave act was passed by Washington state legislature in 2017. Beginning January 1, 2019, employers started assessing premiums on employees' wages and beginning on January 1, 2020 Washington workers have been able to apply for Paid Family and Medical Leave benefits. We had an overwhelming response to the program and continue to make efforts to improve our policy, our operations and our user experience. This rulemaking is part of the effort to improve functionality and provide information for the community. This covers the topic of interested parties and determination notices to employers, specifically WAC 192630015 how will a determination be made about an employee's eligible for benefits. I encourage you to read the text of the rules for a more robust understanding. The draft rules are intended to interpret and clarify Title 50 (A). Thank you for interest in the participation and rulemaking efforts to implement this important program. We look forward to hearing your comments today. And please another reminder If you are not providing comment, to mute your phones so everyone can hear. Thank you very much.

>> JASON: We will now hear testimony from those on the phone. When you testify, please speak clearly, state your name, spell your last name, and state who you represent if you are here in a representative capacity. Please remember to unmute your phone prior to speaking, and remute your phone after you are done providing testimony.

We are now ready to accept public comment from those in the room-- If those on the phone. If you would like to provide comment on the topic of employer notification, you may do so at this time.

>> JESSICA: I'M Jessica Cromer. And I have found that the employer notifications are confusing and lacking.

To date, when the department makes a determination to deny benefits, no reason, not even a vague reason is given to the employer.

This creates a hardship. Especially when the employer has no reason to think a denial is coming. For example, If we did not contest an application, we would be assuming eligibility perhaps based on FMLA or other medical certifications or leaves that we already have in place. There is so much time between when a person might apply and when we get any notification from the department. And we operate and plan on an assumption of approval If we have no reason to think that we would be denying or that the employee would be denied for their application.

It is especially difficult If a denial comes after a leave has began based on the employee's intent that they have shared with the employer. This can cause unpaid time to occur for an employee that later needs historical edits or corrections to fix and then

brings in the payroll department to have to make corrections retroactively. Without a denial reason, it is difficult for employers to even know what to contest. If we chose to contest a decision made by the department because we have no information given to us. We wouldn't even know what to provide to support the decision either. Thank you.

>> JASON: Thank you very much for that comment.

>> ALI: Ali Schassma, I don't remember a particular employer. The first component of the comments is in order for employers to comprise the job protection component that aligns with the FML eligibility the employer needs to understand the reason for leave and if it is for a family member, what the relationship is.

Secondly, in order for employers to ensure they are offsetting benefits accurately, they need to understand the dates of approval under the Washington Paid Family and Medical Leave as well as the benefit amount being paid since they will not have access necessarily have access to all of the employees' past historical pay.

And additionally, the method of delivery for employers is cumbersome and I would encourage evaluating the opportunity to provide electronic information at a minimum and a portal where employers have access to information about their employees is ideal. Thank you.

>> JASON: Thank you for that comment.

[OVERLAPPING SPEAKERS]

>> I would like to dovetail off the statement that it would be encouraged if we were able to have the employee apply for leave when they notify the employer at 30 days so we can determine if it is going to be denied or approved. It is creating a hard-on for the employee not knowing the benefit until six weeks down on the medical leave without getting around to getting paper work. Approval prior to events would be strongly encouraged.

>> JASON: Would you mind restating your name. I think there was cross talk at the beginning.

>> Jordan Silver. Tristate Memorial Hospital employment coordinator.

>> JASON: Thank you very much.

>> This is a Patricia from Lincoln Financial Group again.

>> JASON: Go ahead.

>> Okay. So I have a comment about the deletion of the provision where the employer is provided with a copy of the determination and now the change is just to inform whether the application is approved or denied.

And just to echo everybody's comments, employers have to know the frequency and duration for which the employee is approved and without the information it is unclear how employers can know about an employee's absence, whether it is PFML qualifying or not.

So the recommendation is that employers receive a copy of the determination. And this recommendation is based on the PFML law that provides that an employer shall have access to records and information relating to a decision to allow or deny the method if the decision is based on material information provided by the employer.

And the citation for this is RCW 50A.25.040.2B. Our recommendation is that employers should receive a copy of the determination rather than just whether it was approved or denied.

So in the alternative, we recommend that the regulation allow employers to request a copy of the determination from the department. That's all. Thank you.

>> JASON: Thank you.

>> Can you hear me this time?

>> JASON: Yes.

>> Jenny Haykyn. At a previous rulemaking session several employers and insurance companies spoke to the importance of us not only being notified of the leave but each time the leave is taken under intermittent leave with the date and hours. Without the information we are not able to make sure that employees are paid appropriately. If they are not receiving pay from the state and we are not able to provide job protection appropriately. I would like to state that this is not a nice to have. This is an absolute necessity for employers and leave administrators.

>> JASON: Thank you very much for that comment.

>> I'm Kaileah Baldwin.

>> JASON: Thank you, go ahead.

>> I want to agree with the person who just spoke about needing more correspondence between the employer and the program administrator.

I am a benefits administrator at an organization, and when I received notice for a person who was going on parental leave and was getting the Washington Paid Family Leave benefit, I received a letter that said the person was approved and no other information. When the person wanted to return to work on an intermittent basis, I was not sure how to connect to the program to ensure that the person was getting paid accurately in a way that would maximize the ability to make claims through the paid family leave program and would match with what our organization benefits that we provided were.

I additionally want to testify that the -- it would be beneficial for notice to be given via e-mail or electronically or in a more remote way, particularly during this time of COVID where lots of employers are working remotely and not in the physical office to receive physical letters.

I also want to testify that I experienced a bad access to like contacting the program administrator and this was even before COVID really happened. This was in January that I e-mailed twice per the letter that -- per the information on the letter and also called multiple times and did not receive any information back.

I think that is what I have got. Oh, yeah. That's all.

>> JASON: Thank you very much.

>> Kassandra Ravnles. I also support the idea of having an online portal for employers. Currently with FML we have access to information as we manage the claims and we can notify supervisors when and how long the employee will be out and what the intermittent leave approved for. When we receive the notices we really don't

have a lot of clarification in order to operation our businesses with the limited amount of information we are receiving.

>> JASON: Thank you for that comment.

>> This is Rachel Paber. I just want to piggyback on last two. I have multiple employees stating that they received (indiscernible) and I received no notification that they had an approved claim. Nothing is coming through and I like the last person I reached out and have not been receiving correspondence back.

>> JASON: Thank you for that.

>> MARTI: This is Marti with (indiscernible) Marti Cardi. And I want to add my thoughts on the need employers have for understanding the frequency and duration of an approved leave for intermittent usage without knowing what to expect employers have a very difficult time planning their workforce.

The notice they get only says the date range that the employee will be approved for leave but does not indicate as others have noted the leave reason or duration or expected absences and makes it hard to manage the work force and hard for the employer to assess whether the employee is using leave appropriately in line with the approved and requested leave and really ties employers and administrators' hands understanding what is going on on and when they will be gone and how much they will be gone and for what reasons. Thank you.

>> JASON: Thank you for that.

>> COLLEEN: This is Colleen Connors with hospice of Spokane. And I just echo the comments about the communication. It has been very confusing. We have several employees out with maternity and bonding time. And there has been I suppose the information I'm getting is inconsistent.

We also, I filed an appeal back in February. I never heard anything until last week. And then at the same time, this person actually got an extension and no paperwork was filed with the employer.

So it has been very confusing, the lack of information with regard to the reasons for the approvals. So I agree that some sort of portal or access electronically so that we can, again, be able to pay the supplemental leave or do the things that we need to do from an administrative point. If you are a smaller organization it is a little bit challenging as far as coverage when you are not knowledgeable about when to expect people to return. It is conflicting information that I'm receiving. Thank you.

>> JASON: Thank you very much.

>> This is La Tanya Charles. I want to echo some of what Alli said on the need for employers to have more information in the notice. The minimum I would like the department to look at including whether or not the leave is for FMLA qualifying event because that will be important related to continuation of health benefits. There seemed to be in a later hearing today.

>> JASON: Thank you. Any other comments on the proposed rule regarding employer notification -- any other comments?

>> JENNIFER: This is Jennifer Doyle last name is D-o-y-l-e. I would like to comment/recommend that employees and employers are also sent notification when an employee has exhausted their PFML leave benefit for their claim year.

>> JASON: We will take that comment. Thank you very much.

Are there any other comments on the proposed rule regarding employer notification? One final call before I close this hearing.

In conclusion, this hearing was convened to consider testimony on Paid Family and Medical Leave rulemaking.

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

The deadline for submission of written comments is 5 pm today, May 6, 2020. You may submit written comments online by entering bit.ly/commentforum in your browser. Comments must be received by today's deadline to be considered part of this rulemaking.

A final decision regarding adoption of the proposed rules will be made after all testimony and written comments have been fully considered, with a target date of May 13, 2020.

On behalf of Commissioner Suzi LeVine, thank you for participating in this hearing. This hearing is adjourned at 9:55 a.m. on May 6, 2020.

>> JANETTE: Thank you, Jason. The third hearing on the agenda is regarding Deceased Claimants. Please remember that during this hearing we will only allow testimony and public comment on this topic. Please remember to keep your phones muted unless you are commenting on the proposed rule. Back to you, Jason, to begin the hearing.

>> JASON: Thank you. And just a reminder of where we are in the agenda. We are now opening the third of the four hearings today. The third hearing that we are about to open is on deceased claimants as Janette said and then we have one final hearing after that on employer maintenance of health benefits. So thank you very much. I know we are doing things a bit differently today so we appreciate your patience.

Pursuant to the authority given under Washington State Law RCW 50A.05.060, Chapter 42.30 RCW of the Open Public Meetings Act, and Chapter 34.05 of the Administrative Procedure Act, this hearing is hereby convened. For the record this hearing is beginning at 9:56 a.m. on May 6, 2020 by conference call.

This hearing is convened to consider testimony concerning the Paid Family and Medical Leave rulemaking. At a high-level, this rulemaking amends an existing rule the department sees as necessary for proper program implementation. The department is always working to refine and improve the program and this rulemaking is one way to provide clear guidance to the community.

Notice of this hearing was filed with the Washington State Register on March 31, 2020, as WSR number 20-08-120, was sent to interested parties, and was posted online.

My name is Jason Barrett and I am the Lead Policy Analyst for the Paid Family and Medical Leave Division of the Washington State Employment Security Department.

I represent Commissioner Suzi LeVine as the hearing officer presiding at this public rulemaking hearing.

There are staff members from the Paid Family and Medical Leave Policy Team attending this hearing by phone. Please introduce yourselves by name and title.

>> APRIL: Thank you. My name is April Amundson. I'm the Paid Family and Medical Leave policy and rules manager for the program. Thank you.

>> JANETTE: I'm Janette diamond, rules coordinator for Paid Family and Medical Leave program.

>> JASON: Please be advised that this hearing is being transcribed by a court reporter and the transcript will become a part of the official rulemaking file. To facilitate this transcription, please state and then spell your name before your testimony.

Please also note that this hearing is convened to consider comments on the proposed rules. Because of the formal nature of this hearing, we are unlikely to answer any questions you may ask. If you do pose a question, I will ask you to rephrase your question as a comment. Questions can also be emailed to us at paidleave@esd.wa.gov, where our customer support staff will respond promptly.

A Concise Explanatory Statement of the agency's reasons for adoption of the rule, including a summary and response to all comments received after the publication of the Proposed Rules, will be placed in the permanent rulemaking file and posted online. This document will be sent to all interested parties who have signed up to receive Paid Family and Medical Leave emails.

We will begin with April Amundson who will provide a brief explanation of the proposal.

>> APRIL: Thank you, Jason and Janette. The act was passed by Washington state legislature in 2017. January 1, 2019 employers could start assessing premiums on employees wages and beginning January 21, 2020, Washington workers have been able to apply for Paid Family and Medical Leave benefits. We had an overwhelming response to the program and continue to make efforts to improve policy operations and user experience. This rulemaking s part of the effort to prepare the program to improve functionality and to provide information for the community.

This is a formal hearing that covers the topic of addressing claims when an employee has passed away. Specifically WAC 192.800.150 can an employee designate a representative to act on their behalf. Read the text of the rule for a more robust understanding. The draft rules are intended to interpret and clarify the rules. Thank you for your interest and participation in rulemaking efforts to implement our important program. We look forward to hearing your comments today and as a reminder to please mute your phones if you are not providing comment. Thank you.

>> JASON: We will now hear testimony from those on the phone. When you testify, please speak clearly, state your name, spell your last name, and state who you represent if you are here in a representative capacity. Please remember to unmute your phone prior to speaking, and remute your phone after you are done providing testimony.

We are now ready to accept public comment from those in the room-- If nose on the phone on the topic of -- from those on the phone on the topic of deceased claimants.

Are there any comments on the phone about the proposed rule regarding deceased claimants? We are now accepting comments from those on the phone on the proposed rule regarding deceased claimants.

One last call for any comments regarding the proposed rule on deceased claimants before we conclude.

In conclusion, this hearing was convened to consider testimony on Paid Family and Medical Leave rulemaking.

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

The deadline for submission of written comments is 5 pm today, May 6, 2020. You may submit written comments online by entering bit.ly/commentforum in your browser. Comments must be received by today's deadline to be considered part of this rulemaking.

A final decision regarding adoption of the proposed rules will be made after all testimony and written comments have been fully considered, with a target date of May 13, 2020.

On behalf of Commissioner Suzi LeVine, thank you for participating in this hearing. This hearing is adjourned at 10:03 a.m. on May 6, 20.

>> JANETTE: Thank you, Jason. Is fourth and final hearing that we have all been waiting for today is regarding employer maintenance of health benefits. Please remember that during this hearing we will only allow testimony and public comment on this topic. I will turn it back over to Jason to begin the hearing.

>> Thank you, Janette. Just a reminder this is the final hearing of the day on the topic of healthcare continuation for employees.

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

For the record, this Hearing is beginning at 10:04 a.m. on May 6, 2020 by conference call.

This hearing is convened to consider testimony concerning the Paid Family and Medical Leave rulemaking. At a high-level, this rulemaking amends an existing rule and creates a new rule the department sees as necessary for proper program implementation. The department is always working to refine and improve the program and this rulemaking is one way to provide clear guidance to the community.

Notice of this hearing was filed with the Washington State Register on March 31, 2020, as WSR number 20-08-122, was sent to interested parties, and was posted online.

My name is Jason Barrett and I am the Lead Policy Analyst for the Paid Family and Medical Leave Division of the Washington State Employment Security Department.

I represent Commissioner Suzi LeVine as the hearing officer presiding at this public rulemaking hearing.

There are staff members from the Paid Family and Medical Leave Policy Team attending this hearing by phone. Please introduce yourselves by name and title.

>> APRIL: Hi, thank you again for attending. My name is April Amundson. The Paid Family and Medical Leave policy and rules manager. Thank you very much.

>> JANETTE: I'm Janette Dunham, rules coordinator for Paid Family and Medical Leave.

>> JASON: Please be advised that this hearing is being transcribed by a court reporter and the transcript will become a part of the official rulemaking file. To facilitate this transcription, please state and then spell your name before your testimony.

Please also note that this hearing is convened to consider comments on the proposed rules. Because of the formal nature of this hearing, we are unlikely to answer any questions you may ask. If you do pose a question, I will ask you to rephrase your question as a comment. Questions can also be emailed to us at paidleave@esd.wa.gov, where our customer support staff will respond promptly.

A Concise Explanatory Statement of the agency's reasons for adoption of the rule, including a summary and response to all comments received after the publication of the Proposed Rules, will be placed in the permanent rulemaking file and posted online. This document will be sent to all interested parties who have signed up to receive Paid Family and Medical Leave emails.

We will begin with April Amundson who will provide a brief explanation of the proposal.

>> APRIL: Thank you, Jason and Janette. The Paid Family and Medical Leave Act was passed by Washington state legislature in 2017. January 1, 2019, employers could start assessing premiums on employee's wages and beginning January 1, 2020, Washington workers have been able to apply for Paid Family and Medical Leave benefits. We had overwhelming responses to the program and continue to make efforts to improve policy, operations and user experience. In rulemaking is part of an effort to prepare the program to improve functionality and provide.

In formal hearing the topic of the continuation of healthcare benefits. Amending WAC 192.700.010 and the new sec hundred 192.700.020 when does an employer need to provide a continuation of health benefits to an employee on Paid Family and Medical Leave. I encourage you to read the text of the rule for a more robust understanding. The draft rules are intended to interpret and clarify the revised code of Washington. Thank you so much for your interest and participation in the rulemaking efforts to implement our program. We definitely look forward to hearing your comments today. If you are not speaking or providing comment at the moment, please mute your phone so everyone can hear the comments you are providing. Thanks again for your participation.

>> JASON: Thank you, April. We will now hear testimony from those on the phone. When you testify, please speak clearly, state your name, spell your last name, and state who you represent if you are here in a representative capacity. Please remember to unmute your phone prior to speaking, and remute your phone after you are done providing testimony.

We are now ready to accept public comment from those in the room-- from those on the phone on the proposed rule regarding health benefit continuation.

>> Hello. My name is Kaileah, last name Baldwin B-a-l-d-w-i-n. I would like to testify that this portion of the rule code is an additional reason for needing more correspondence between the employer and program administrators around how long the employee is on Washington Family and Medical Leave and when they return or when their eligibility is no longer -- or they are no longer eligible for benefits through the program so the employer knows how and for how long the medical benefits should be continued.

>> JASON: Thank you for that comment.

>> Hi, this is Rachel Taber again, Taber. Comment on the section is clarification is needed for unionized environments. Example collective bargaining agreements and benefits administered by a third-party but not the employer but still the employer of record and requires a minimum threshold of hours met in order to maintain benefits.

So does this supersede the collective bargaining agreements?

>> JASON: So your comment is that you would like clarity on how this rule would interact with third-party administrators and collective bargaining agreements.

>> Yes.

>> JASON: Great. We'll take that comment, thank you.

>> This is Candice Fox representing the association of Washington Dock. AWC has concerns about the interpretation contained in the proposed WAC. We believe that what is proposed is contrary to the plain reading of the statute which says the employees are only responsible for continuation of benefits if required by the federal Family and Medical Leave. We believe that this proposed rule goes beyond that statutory requirement and would result in significant additional cost for employers who have to continue benefits for up to 30 weeks. If there is an overlap between PFML and FML coverage. Even by one day. We think this creates a significant undue burden on employers. And again, it is contrary to the plain reading of the statute. We would ask that the proposed WAC be removed from the rules since it does not align with the statutory requirement. Additionally, we have similar concerns with proposed WAC 192.7.010 that would require continuation of benefits when an employee has been laid off for reasons unrelated to the leave and is not entitled to restoration. Under FMLA, If the employer is laid off during the employer is not required to maintain employee benefits. We believe, again, this proposed rule is not -- is contrary to the plain reading of the statute and would create significant hardship and burden on employers to continue benefits that are not currently required by FMLA. We ask that this proposal be removed and not adopted. Thank you.

>> JASON: Thank you for that comment.

>> Hello. My name is Jessica Cromer. I would like to echo Candice's comments as well as add my own in regards to the continuation of benefits.

It is confusing whether one full scheduled shift must be missed under FMLA and PFML concurrently or any overlap of hours missed by PFML or FMLA on the same day would qualify. Someone on PFML for just hours per day and not a full shift missed would be ineligible for benefits continuation. I don't know if that is the intent of the proposed rule or not. Thank you.

>> JASON: Thank you for that comment.

>> Hello. Can you hear me?

>> JASON: Yes.

>> Sorry. This is Nicole Hite. I represent the National Electrical Charter Association. I will echo multiple speakers here especially the one that spoke about the collective bargaining agreements. Our maintenance of healthcare benefits are paid hourly for hours worked, there is no way to pay a full month premium through our -- the way that we handle our benefits. It gets very, very tricky and complicated especially without clear information of what benefits are being paid and supplied back to the employer and then they have to work with the health trust. It is very onus and not to mention again echoing the other speakers that spoke about the undue burden upon the contractor. For those two reasons we request that this Rule not be adopted.

>> JASON: Thank you very much.

>> Laura Folheim, F-o-l-h-e-i-m as in Mary and I'm representing my employer Medtronics. And I would like to echo what all of the prior speakers have said as well. Managing the leave process has become rather laborious and often confusing for employees and I propose that we either strike this or we further align with FMLA in the rules and regs and allow us to run FMLA concurrent to paid FML in its entirety.

>> JASON: Thank you for your comments.

>> This is Rachel Taber again. Just bouncing off the other comments. If this isn't struck, we need clarification on D, which says the employee returns from leave to any employment. It doesn't define current employer and leave in Washington right now is based on any employment they received at the point of requesting leave.

>> JASON: Thank you for that.

>> This Kaileah Baldwin again. I would like to agree that further clarification needs to be had on the -- that point to be regarding return to leave to any employment.

I take that as to mean if the person goes to another employer that would be providing healthcare benefits to them, but any employment does not provide healthcare benefits. That if a person is only employed only a couple of hours a week or If an employer does not provide for other reasons provide healthcare insurance then that would be -- that needs to get clarified. And also I want to testify that I think that requiring continuance of medical -- of healthcare benefits is an important part of this program that especially through this COVID thing when folks get laid off and they are not sure about when they will be able to come back to work but are expected to come back to work once the employer has money again. I don't know.

This is a particularly important time for folks to be able to continue their healthcare benefits and to be able to depend on their employer for that.

Yes.

>> Thank you for that.

>> My name is Michelle Cvitaovic. Many of our group health plans have employment requirements as well as pay requirements in order to remain eligible for those group plans.

If an employment is -- If I understand the -- these rules clearly, an employee can lose their employment while on leave but have to maintain benefits. That is counter to our contract with our providers.

The other issue is if we don't know that they -- if we can't confirm that an employee who was maintaining their employment is being paid by the state, it goes counter to our insurance contract as well. Thank you.

>> JASON: Thank you very much.

>> This is Mandi Humphreys, and also with the Washington state Paid Family and Medical Leave advisory committee. I want to testify in support of the rules particularly from an earlier comment made about the plain reading of the statute. I want to note that it says If required by the federal medical leave act during any period taken under the title that the continuation of health benefits must be maintained. We support the rule by the department and the really want to underline its importance particularly as our state is weathering this public health crisis that the continuation of access to healthcare is extremely critical to families always but particularly right now.

Thank you.

>> JASON: Thank you very much.

>> Lorna Klemanski, K-l-e-m-a-n-s-k-i. I'm speaking on behalf of Chelan County public utility district, and I agree with previous employers who have opined that this interpretation does not seem to comport with language of the statute. I think that means that it is likely to be struck down by the Court.

It also is an undue hardship for employers to maintain benefits for up to 30 weeks. And it is difficult for us to have employees out for such long periods of time. This extension of benefits or the additional time makes it that much more difficult to get employees back to work.

We need them doing the work of the citizens of Chelan County providing them their essential utility services. Thank you.

>> JASON: Thank you so much for your comments. (indiscernible).

>> JASON: I'm sorry. We are having a bit of difficulty hearing you.

>> (Indiscernible).

>> JASON: If you could please just quick reminder to mute your phones If you do not wish to provide comments, that would be great. Any other comments on the proposed rule regarding the continuation of health benefits? Any additional testimony on the proposed rule regarding the continuation of healthcare benefits?

Are there any other final comments before I conclude this hearing on the topic of healthcare benefits continuation?

In conclusion, this hearing was convened to consider testimony on Paid Family and Medical Leave rulemaking.

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

The deadline for submission of written comments is 5 pm today, May 6, 2020. You may submit written comments online by entering bit.ly/commentforum in your browser.

Comments must be received by today's deadline to be considered part of this rulemaking.

A final decision regarding adoption of the proposed rules will be made after all testimony and written comments have been fully considered, with a target date of May 13, 2020.

On behalf of Commissioner Suzi LeVine, thank you for participating in this hearing. This hearing is adjourned at 10:25 a.m. on May 6, 2020.

>> JANETTE: That concludes today's agenda items. Thank you. Please look for updates on line If you haven't signed up to receive Paid Family and Medical Leave notices, please sign up at paidleave.wa.gov. Thank you all for your time, comments, and participation. We appreciate your you calling and accommodating in this different climate. Have a great day.

>> JASON: Thank you all very much.

>> Thank you, Sandra, our court reporter. Thank you for participating with us today.

>> CAPTIONER: You're welcome. Have a great day.