

REALTIME FILE
WASHINGTON EMPLOYMENT SECURITY DEPARTMENT
PFML RULEMAKING MEETING
FEBRUARY 13, 2020
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>> Good morning. This is Jason Barrett with Paid Family and Medical Leave. We will get started in a few minutes. Before we do, can someone on the phone confirm that you can hear me clearly.

>> Hey, Jason. I can hear you.

>> Thank you, Darius. We do have a transcriber who is going to be recording this meeting. They are joining us by phone. Can that transcriber confirm they are present on the line right now.

>> Thank you. We'll get started very shortly.

>> Captioner: I am on the line. I do not have a microphone on this line so I cannot answer your question on the line.

>> If you could mute your phones unless you are planning to address the meeting that would be very helpful. Thank you very much. We'll get started in just a minute.

>> Just another small reminder, if you would kindly mute your phones unless you are hoping to address the meeting that would go a long way on cutting back on the background noise. That would be very helpful, thank you.

>> All right. We will go ahead and begin our stakeholder meeting for this morning.

I would like to extend a good morning and welcome to everyone joining us in the room and by phone.

Whether you are a veteran of our rulemaking process or joining us for the first time, we greatly appreciate you taking part of your morning to offer feedback on the latest batch of Paid Family and Medical Leave rulemaking.

We will start with introductions. I'm Jason Barrett, the lead policy analyst for Paid Family and Medical Leave.

>> Brittany McVicar, the same program.

>> April. I want to reiterate -- the policy and rules manager. I want to reiterate thank you for participating in the rulemaking.

>> For those who have joined us for previous batches of rulemaking in the past, this may -- the timeline for this batch of rulemaking might feel a little bit different. And I want to kind of go over what our plans are for the next several months as it relates to the batch of rules that we are discussing today.

In previous rounds of rulemaking, we have had several iterations of this meeting as well as multiple versions of the formal hearing.

At the end of the process. As we are moving into what we refer to as regular rulemaking, that is going to change a bit. As we rolled out the rulemaking for this brand new program, we felt that a more extensive process was appropriate. But now that we are live as I hope you are aware, we are moving in to just a slightly more condensed version of our rulemaking.

Where previously we had two versions of the meeting, as we move into regular rulemaking this batch will only feature one stakeholder meeting which we are attending as we speak. The public draft is available online for those who have not had a chance to see it.

If you browse to [bit.ly/-- that is bit.ly/commentforum](https://bit.ly/commentforum), you can see the draft of the rules we are discussing today under the tab in the current rulemaking. That is discussing the timeline. Here we are on February 13 at the one and only stakeholder meeting for this round of rules.

We plan, I stress the word plan, to file CR-102. There will only be one hearing as opposed to the two that you may be used to in previous iterations of rulemaking. Once that is complete we plan to file the 103 on May 13 for effective date of June 11 for rules. Just a quick overview of what the next several months will look like for the rules we are discussing today.

As I mentioned before, Paid Family and Medical Leave is now live as of the first of the year. We are now receiving applications and paying benefits under this brand new program. And just as a side note, I would like to extend a thank you to those who did participate in rulemaking in 2018 and 2019 leading up to that date.

I know I can say without a shadow of a doubt that our rules are better because of meetings like this and because of the feedback we have received from participants like yourself. So we are extremely appreciative of the time that those of you have been willing to spend with us and the feedback you have been willing to share with us as we have moved through our rulemaking processes and we look forward to continuing that cooperation as we transition into ongoing rulemaking for what is now a live program.

For today, we are discussing five separate topics for rulemaking. Those topics primarily revolve around the definition of sibling, the definition of claim year, the continuation of healthcare benefits, employer notification of determinations on the initial application, as well as what happens when an active claimant passes away as they are claiming benefits.

So those are the five topics that we will be covering for our rulemaking today. I do understand that there may be additional questions about the program at large. As you may have already read in the news, we have received a considerably higher number of applications than we were anticipating. In the first three weeks of the program, we received a number of applications that we initially projected to receive in the first three months of the program. So that gives you an idea of the excitement around this program that exists in the state.

But it should also hopefully give you an idea of some of the operational and logistical challenges that that has presented to the program as we have launched.

So more than anything, we really appreciate the patience of both the employer and employee as we move to process the application as quickly as possible. If there are questions about the application process, or where an application might lie in the processing process, this team is not necessarily equipped to answer those questions today. I will refer questions along those lines to our customer care line. The phone number for the team is 833-717-2273. Once again, that is 833-717-2273. Our fantastic customer care team is working as hard as they can to process applications as quickly as possible and to pay benefits to those individuals who need them.

So that is kind of a general overview of where things sit. I'm going to pivot us back to rulemaking, the reason for today's meeting. We do have folks here in the room and I know we have several folks joining us by phone who are eager to provide feedback on today's rules.

Just to kind of keep as orderly a process as possible, I'm going to open up the floor for comment to those joining us here in the room first. Because of the relatively small number of rules that we are discussing today we are not going to move through rule by rule. We're going to just kind of open it up for general feedback on all of the rules that are being discussed here today.

So if you have any comments on any rule that we are discussing today, go ahead and speak up and we will recognize you. And for the purposes of the transcriber, if you are here to provide comment on the rules, if you could start by letting us know your name and what organization you represent if you are here in a representative capacity. And to just if at all possible, try to speak slowly and clearly so that our transcriber can capture every comment that we receive here today.

With that, I would like to open the floor to those individuals here in the room who wish to provide comment on the rules today. So if there is anyone here in the room who wishes to provide comment, we have a table and microphone here for your use. So the floor is now open to those here in the room who wish to provide comment.

All right, seeing no comments here in the room, I'm going to open up to the phone. If you could please remain muted until you are trying to speak, that would be very helpful to us in cutting back the background noise.

And just a quick reminder that when you do offer comment, please stay and spell your name and the organization that you represent. So, with that, let's go ahead and open up the phone to comments on today's rules.

>> Good afternoon. My name is Gina Rutledge from MetLife.

>> Hi, Gina.

>> Hi. We appreciate you giving us a chance to contribute as well. My question is in regards to the definition of claim year. WAC 192-500-70.

>> Um-h'm, go ahead.

>> Okay, great. Knowing that these benefits can be taken intermittently as well as continuously, could we ask for clarification about the point in time where the wages would be put in place?

So we understand the eligibility for the claim year here is at like 52 week rollback period beginning on the Sunday. That's great. What we would like clarification is if

someone submits that claim that that same start date is the date we use for the wages to use in the calculation.

We have some ties to this definition later on in your regulation and it appears that the benefit calculation to adjust throughout the claim year if the employee changes jobs, gets, you know, if they have a claim open we are just trying to confirm that the same benefit paid for the first day or the first absence will be the same benefit paid throughout the life of that claim.

>> Yeah, that is a great question, Gina. Just for those who may not be familiar with the claim year concept.

A claim year indicates the duration of time that an employee has to use their duration of paid Family and Medical Leave to which they might be entitled. The rule clarifies the claim year will begin on the Sunday prior to when the employee submits their initial application for benefits to us.

As you can see from the strike-through language and added language that is a little bit of a change from the previous iteration of the rule where the claim year in most cases starts on that cadence, but in the case of the replace (indiscernible) the claim year would start on the Sunday prior to that replacement.

What is being illustrated in this rule that we are discussing here today, once the claim year begins, and that will now -- if in this draft rule, that would be even in cases of birth replacement, the Sunday prior to the application submitted by the employee.

Once the claim year begins the employee's typical workweek hours, duration of leave, and benefit amount are set for the entirety of the claim year even if the employee does change jobs or if a different qualifying event pops up later in the claim year. The benefit amount remains set for the entirety of the claim year. Only when that claim year expires and the employee applies again would new math be used to calculate their benefit information for the subsequent claim year if there is one.

But once the claim year is set, the benefit amount, the duration of leave, those do not change until the claim year ends.

>> Great. Thank you. Now something you just said sparked another question. We recognize that workers are taking care of both elderly parents or could have more than one need in a year.

Are you asking that people file maybe their mother needed help first and then their father needs help later. Would someone need to file two different claims within the claim year? One for the mother and one for the father? Or would that one claim open to care for a family member be applicable to, you know, more than one covered family member?

>> We do ask for additional applications in a claim year when an employee experiences a second or third or subsequent qualifying event.

The reason for that is because we need to evaluate the eligibility for those subsequent durations of leave based on some factors like if they give proper notice to their employer, is the second qualifying event substantiated, is it an eligible event? We need reevaluate the validity of the second qualifying event using many of the same criteria that we used to determine the eligibility for the first.

So that is why we do require a second application for subsequent qualifying events. We will notify the employer similar to the first claim that was filed to give the opportunity

to the employer to contest the validity of the application if the employer has information that we should have for subsequent event.

So yes, we do require a second application and a second approval process for subsequent qualifying events even if they are within the same claim year.

But to your first question, even those second, third, fourth, qualifying events in the claim year, they would still have the same benefit amount and other benefit information and calculations attached to those qualifying events because they are in the same claim year.

>> Great. Thank you so much for your time.

>> Thank you, Gina.

>> This is Jenny (phone line distortion). I have a follow-up about the notifications being sent to employers.

>> Could you repeat your name and organization for the transcriber, please?

>> Jenny Haykin with Puget Sound Energy.

>> Thank you so much for that.

>> Certainly.

>> My question is the documentation we are receiving from the state doesn't notify us if it is family leave or for the individual's own self.

Is doesn't inform if it is intermittent or continuous. I'm hoping in the rulemaking we can address what needs to be in the documentation send to employers so the employers know what it is that has been approved.

>> So I'm hearing a request that additional information be provided to employers regarding the type of leave and the precise dates of either continuous or intermittent leave in maybe a future round of rulemaking? Is that accurate?

>> That would be helpful. Thank you.

>> Great. Thank you for that.

>> Marty Carty from Matrix Absence Management.

>> Hi, Marty.

>> I want to thank Jenny for the comment because that is a great concern to me. I don't see anything in the draft rules that are posted, you know, one of the key topics that you mentioned Jason was that this is going to address employer notifications.

I don't see anything in the draft rules that talks about employer notifications that goes beyond just giving employers an opportunity -- giving stakeholders an opportunity to comment when they get notice that a claim has been filed.

I was hoping to see the kind of information added that jenny mentioned. Employers really need to know exactly what has been approved, what frequency or duration to expect for intermittent leaves for business planning purposes, for attendance policy applications, job protection. Employers are getting nothing but the range of the approved leave of the number of months or the dates that the approved leave starts and finishes and often that is well beyond the 12 or 14 or 16 or even 18 weeks that might be the maximum the employee could get.

And, therefore, the employer really has no information about what the employee has been approved for and what they can expect. So am I missing something in the draft rules that addresses employer notification?

And second, I totally support jenny's comment about employers need more information about what has been approved.

>> I appreciate that comment. It is not specifically spelled out here but it has been a decision within the department that employers be named an interested party on the initial application for benefits.

And what that means is that once a determination has been made on an employee application for leave the employee will receive information specifically the duration of leave approved as well as whether or not the application was approved or denied. Because we do understand that employers need that to determine whether or not job protection applies and the leave is approved or not by the department.

We are intending to address some of the concerns through the internal decision to name the employer as an interested party on the determination of eligibility. I hope that that will alleviate some of the concerns that you mentioned but I will absolutely take the comment that more specific data points are requested by the employer with regard to the duration of leave, type of leave, and things of that nature. So I appreciate that comment.

>> Thank you.

>> This is Trish Vuniga from Lincoln Financial Group.

>> Could you spell your name for us? So sorry.

>> Sure, it is V-u-n-i-g-a. So just piggybacking off the questions around notifications to employers. I just heard there is an internal decision to be made to name employers as interested parties. And I was wondering is that something that requires additional rulemaking? Or is that just an internal decision and one that you could operationalize through the PFML just through the normal processes of PFML operations?

>> Jason: Sure, so we define interested parties elsewhere in rule.

The relevant rule is WAC 192-500-035. And if you look at that rule, the language allows the department to designate an employee or employer as an interested party in other determinations made by the department.

So the decision to name the employer as an interested party on the initial application stems from the authority granted by that rule. So additional rulemaking right now on that subject has not been officially planned. But I can certainly take the comment if you feel it is appropriate that the department kind of make that more of a formal decision and Rule if that is the comment that I'm hearing from you.

>> Thank you for that. I was just wondering why we can't fold that into the current rulemaking process so that it could lead to a quicker decision.

>> I will take that comment that you would like that more formalized, that employers are interested parties on the initial application.

>> Thank you very much.

>> This is Monica Harper from Common Spirit Health. My name name is Harper H-a-r-p, as in Paul, e-r.

>> Thank you. Go ahead.

>> We are noticing we are receiving claims that are in 2018 and 2019 and the claim is not actually going in to the year 2020.

We have tried calling to atreasure that but we are not -- to address that but we are not able to get in through your phone line for the care team.

>> When you say you are receiving claims are you indicating you have a voluntary plan in place?

>> I believe so, yes. Jay.

>> Or just notifications that employees are giving.

>> Notifications that the employee filed for a claim for the 2018 or 2019 year. And it is not actually going into 2020. And so we are concerned about that.

>> So you have employees notifying you that they are attempting to file an application with the department for benefits for leave that they took prior to 2020? Is that correct?

>> We are receiving notifications from the state from, you know, the Employment Security Department that the dates that the employee has applied for are before 2020.

>> Okay. Generally --

>> And the leave ends before 2020.

>> Okay. So I think we will look into that. I mean just, you know, generally speaking employee is not entitled to benefits for any period of leave taken prior to 2020. If that is occurring, we will do research.

>> Monica, just FYI, when an employee files the application with the state, we have to notify the employer within five days. That is not a guarantee of the eligibility for the benefit. We are just notifying the employer that an individual has applied.

I have heard of individuals applying for leave that started before our benefits were even payable. So I'm -- my understanding is we are denying those claims.

>> Thank you very much for that. And I do want to also mention on the denial notices there are not dates given on there. The denial notices from the Employment Security Department.

>> Thank you. We'll take that into consideration.

>> Thank you.

>> This is Shannon --

>> This is Ali --

>> I'm sorry. This is Shannon Lawless. I'm an attorney with the law firm of Ryan Swanson.

And I had a comment on WAC 192-700-010. I know we are just reopening this WAC to make some small amendments but I think there is an important opportunity to make some clarifications here. This WAC addresses notice to employee if the employer is denying employment restorations for particular reasons explained in 1A and 1B. A key employee or an employee who might have been entitled to job protection but isn't because there is a layoff or something like that. To make it clear that that doesn't apply to not giving job protection for the many other reasons that it might not be given. For example, an employer that doesn't have 50 employees or if the employee has not worked for the current employer for 12 months. I would suggest in sub section three.

>> It says class to deny restoration. I would suggest adding the words "under this Section" right there to clarify that the continuation of health benefits is only required in the sort of unusual cases where the employee would ordinarily be entitled to job protection but they are not getting it because they are key employee or because there is a layoff or something that meant the job wasn't there for them to go back to.

I think that could even be further clarified by adding something along the lines of this is section does not apply to denial of job protection because the requirements are not met. And I'm particularly making the comment because I went to an ESD presentation in September and the presenter commented that if you are denying employment restoration you have to give a notice.

And in most cases that is not accurate. Like a small employer that is not holding a job hope doesn't have to give notice every time and they certainly don't have to continue health benefits. I just think it is really important to make that clear.

>> I think that is a great opportunity for clarity. Thank you very much for that, Shannon.

>> Thanks.

>> This is Ali Schaasma with Pacific Resource.

And my comment is regarding WAC 192-500-070 claim year and my concern is just for administrations for employers with approved voluntary plans. A number of employers allow the employees to initiate the request prior to the event occurring.

Simply for continuity of the programs and allow requests for all these types to be submitted prior to. In that event typically an employer defaults to the date the leave started rather than the date it was requested.

So if the event that an employer that has a voluntary plan would have to administer separate of these types to determine the claim year. So I'm just wondering -- I think there is an opportunity for the voluntary plans for an employer to be able to measure the claim year based on the first date of the approved leave rather than the application date.

>> Great, we appreciate the comment. And just to clarify the claim year management under the rule dictates how the department will determine a particular employee's eligibility for benefits throughout the claim year. The minimum standard of a voluntary plan is that the plan must pay benefits that are equal to or greater than what the state would provide.

So you know, the claim year as long as the employee is receiving the same or better benefits as what they would receive under the state plan is the key consideration.

So, you know, claim year, you know, is -- this is how the department will do it. If a voluntary plan wants to do it a little bit differently for their own internal processes, that is not necessarily disallowed as long as if the employee would have applied to the department and would have received benefits then the voluntary plan needs to also grant the same or better benefits. That is our key consideration.

>> Great. Thank you. And one last comment.

I know we have spoken ad nauseam. We would like to see whether it is family or employee's own health. The additional comment is that we need to understand the familial relationship. If employers are responsible for job protection under FML there are familial relationships that the state offers outside of FMLA and employees need to understand that.

>> The request is that the department in notifications to employers confirm the familial relationship between the employee and the individual for whom they are seeking to take family leave? Is that correct?

>> Just needing to understand it is not necessarily proving the relationship, but needing to understand is it a sibling versus a parent.

>> Okay, great. Thank you for that comment. We will take that into consideration.

>> Hi, this is David Sezkorn, last name is S-e-z-k-o-r-n.

>> Thank you.

>> The question is on 720 regarding continuation of health benefits, specifically Section one where it states there has to be an overlap concurrent with FML in order for

that to exist. Our concern or asking for clarification is this could put employers into a particularly tough situation for a couple of reasons.

One, Washington PFML can become eligible for benefits before FMLA benefits are in effect. Even if they changed in the last year. As Ali mentioned, there are qualifying family members under the Washington PFML that are not recognized under FMLA.

There are situations where either the employee is not eligible due to eligibility rationale or no-qualifying family members which will make it difficult for the employer to say we will cover healthcare benefits under this circumstance or not under this. It notes in subsection four they can provide healthcare benefits at will if they want to.

When you are putting the rule can there be clarification about the overlap? Especially addressing the fact that FMLA is not always going to apply under Washington PFML. Either it applies when Washington PFML is in effect or it doesn't. Trying to overlap with FMLA is making it more confusing because you expanded Washington PFML beyond what FMLA would actually cover.

>> This is Darius Freeman. Go ahead, Jason.

>> I was going to respond to David's comment which we appreciate. The rule as it is currently written reflects what we believe to be the stronger interpretation. Obviously as an agency we are required to implement the law as it was passed by the legislature.

And the legislature does point directly to FMLA in terms of what triggers requirement for an employer to continue health benefit continuation. You are correct, there will be cases where an individual will qualify for one program but not the other.

That definitely will happen. But, you know, the agency is required to follow statute. And this language of this rule reflects what we believe to be the statutory language specifically in RCW 50 A .35.020 which dictates the requirements for the continuation of health benefits and there is language that points to requirements under the Federal Family and Medical Leave Act.

We appreciate your comment and because of statutory requirements, that FMLA be considered to determine whether or not an employee is entitled to health benefit continuation, we are required to follow statute in that regard. We appreciate your comment and we will take it into consideration as we review the rules.

>> Jason, this is Darius Freeman with --

>> I'm sorry.

>> Go ahead, no, go ahead, Davis.

>> Sorry. Hang on one second. I had one other follow-up on the notification.

>> Sure.

>> I'm in agreement with everybody else and I don't know if you can answer this. But I do know in previous sessions there was mention of employers being able to see clean status online through an employer portal as part of the notification. Is that being addressed at all as part of the rulemaking process? Or is that something that would be referred to customer care or another area?

>> So, the employer portal is obviously not available yet. It will be at some point in the future as our technology improves over the life of the program.

Certain rules do refer to an employer portal which for the time being is being represented by the customer care team. So if something refers to the employer portal, it -- for the time being the customer care team is serving in that role.

You know, again, as our technology improves and we are able to automate more of the processes that employer portal will be available technologically at some point in the future. But for now the customer care team is serving in that role.

>> Thank you so much. I apologize for interrupting you there.

>> Thank you, David.

>> No problem at all. Finish your thought for sure. This is Darius with UNN. I wanted to tag on with the continuation of benefits and I'm calling from the airport so if you get background noise I apologize.

>> Not surprising that you are calling from an airport.

>> Obviously the statute talks about FMLA as far as continuation of benefits but my concern with the way the proposed rule is written is that rather than saying when FMLA requires it Washington PFML requires it and therefore the benefit continuation is going to line up with the FMLA requirements it is written with a single day of overlap would trigger continuation of benefits for the entire event. And the concerns, there is several.

One is that, and I think David brought up the example, an employee maybe they start the PFML leave with ten months of tenure. And two months of leave and eight weeks and then become FMLA eligible.

Based on the rule retroactively the employer is obliged to continue benefits and they may not have when they believe began not knowing how long it would last or those kinds of things and that puts the employer and the employee in in a bad situation. The other issue that potentially because they don't always overlap there are situations where maybe an employee only has a short amount of FMLA leave left before they -- but they still have a full Washington PFML bank so there may be a short overlap and the employer is expected to continue benefits from the cost perspective not only for the 12 weeks of FMLA but now another 12-16 weeks of Washington PFML, which is a significant cost they are not prepared for.

The way the statute is written and the employers went into the program is believing they would be continuing benefits under the circumstances they are already continuing benefits which is when FMLA requires it.

My recommendation would be to stake with what I read that to stay. When FMLA requires it and PFML is concurrent, yes, you are continuing benefits. But when FMLA is not in play then no continuation of benefits. I think you will have the issue with retroactive application and increased costs for employers and a fairly long tail for them to continue benefits.

>> Yeah, we really appreciate that comment. And it's funnily how closely your comment mirrors many of the conversations that we have had internally about this rule.

I would just say that the language of the rule does reflect what we believe statutory intent is.

Specifically when you look to the language that indicates that health benefits of the employee must be maintained in force for the duration of such leave referring to PFML leave. We have, you know, looked at this from -- through many, many different lenses based primarily off of feedback off a believe draft of the rule that was proposed and we felt that the language as currently written represents the best hybrid of statutory intent as well as reflective of feedback that we received from both the employer and employee communities.

This is why we have these meetings. We will be discussing each and every one of the rules prior to when we file and we will take all of the feedback into account before we do so. So we do appreciate the comments.

>> Jason, this is Shannon --

>> This is Anita --

>> I will be really quick. I agree with Darius interpretation, and I understand the situation you are in with feeling bound by the language of the statute.

Don't you have a technical correction in the legislature? Is there any chance of clarifying this because it sounds like even the folks in the department recognize probably the intent of the law was if the day of PFML is also an FMLA day you are continuing benefits but one day of overlap isn't enough to make it go for the entire duration.

>> We do have a technical corrections bill in the legislature right now. That is correct. I do not believe this section of RCW is included in that particular bill.

But we keep coming back to the statutory language that says that benefits must be maintained in force for the duration of Paid Family and Medical Leave. So, that is rule as it is currently written reflects our interpretation of that part of the language that indicates that concurrent use of FMLA triggers the health benefit continuation for the duration of Paid Family and Medical Leave as is required by statute.

>> This is Trish from Lincoln Financial Group again, and I'm hoping to pose some procedural questions instead of comments on the regulations. If that is okay.

So, I have questions around two things. The first is around the comments to the regulations and specifically written comments.

I know that the open town hall web site accepts written comments. Would you suggest that stakeholders file the written comments via that website? Or is the department also taking comments through the paid leave act WA.gov e-mail. My second question.

>> I was going to address. We will accept comments on the rules through either means. We also have our hearing coming up in May which we will prepare formal comments will be recorded and responded to when the department files our CR-103 document.

So any comments that we receive between when we file the CR-102 which is intended to be on March 20 and when we file our 103 on May 13, any formal comments submitted in any fashion between those two dates must be -- I'm sorry, between March 20 and May 4, any comments submitted in any forum between the two dates is required by law to be responded to by the department when we file our 103 document on May 13.

Whether at the hearing, on the open gov part or by phone or through e-mail, we will be responding to all comments received between the two dates when we file the 103 documents.

>> Thanks, Jason. So my second comment was going to be around timing.

And thank you so much for mentioning that you have your CR-102 due on March 20. If we were to -- if stakeholders were to file comments that would ideally be included in the CR-102 is there a recommended date when you would like to see those comments so that it could be reviewed and potentially included in the 102 before March 20?

>> There is no real way to file formal comments with a 102 document. We will certainly read and take any feedback that we receive prior to that date including comments given in this meeting just to kind of give a little bit of insight into the rulemaking process.

This stakeholder meeting is not actually required by law and there is no formal documentation filed as a result of this stakeholder meeting.

This is a very informal, you know, just sort of what to you think about this draft of rules type of meeting. Not to say that we don't value the feedback that we receive at the meeting, quite the opposite. We absolutely will take into consideration any comment that is given at this meeting or through the portal or by e-mail.

But in terms of what will be filed with a formal rules filing, any comments that are received between March 20 and May 4 will be included in the CR-103 document.

As far as filing comments with the 102 document there really isn't a formal way to do that through the code revisor's office. So if you do have stakeholders that wish to have the comments formally filed with the code revisor as part of the rulemaking documentation I would encourage those comments to be filed between March 20 and May 4.

>> Okay. Thank you very much for the insight.

>> Thank you.

>> This is Jean Scherer with the Partners Group. I have a question on the 070, the definition of a claim year.

Previous to the revision, the date of claim or the claim year was established by either the date of application or the date of birth or placement of a child.

And my concern is that it is not uncommon for a woman going out on maternity leave to file in advance. It is encouraged by most disability carriers to start the process early. The way that the claim year is now defined, that claim year for that same woman who chooses to file early will begin on the date of application and not on the date of birth. For an employer managing other programs concurrent with the maternity leave they will have two different claim years they have to pay attention to.

I think that is going to create some confusion for both the employee as well as employer and the disability carrier when they have two different time periods they are dealing with.

>> We appreciate that comment and we understand under FMLA there is a fair amount of flexibility on the employer side to determine the calendar year. Could be a rolling or days from the event or a few different ways the employer can operate under FMLA.

For PFML we felt it was more advantageous from an administrative point of view and also to explain to employees exactly what periods of time they have to use the entitlements under the program.

We felt that it was easier to kind of make that a little bit more solid in our law. So just to give you a little bit of background as to the reasoning behind that.

But we completely understand that that will often result in the management of multiple claim years on the employer side and we do appreciate that feedback.

>> Hi, this is Sara Ginolfi from Travelers Insurance. I have a quick question.

>> Would you mind spelling your last name?

>> G-i-n-o-l-f-i. I just had a quick question going back to the letters that are September to the employer -- that sent to the employer. The first letter that we get to contest the dates that the employee filed those are going to different offices. When we did have the address on the website updated to come to one location.

So we are just wondering how that is sent out, what -- who determines where they go? The notifications go?

>> I think we are working on technology updates to allow employers to have multiple addresses. The address on file in which the employer was submitted through DOR, or if the employer has updated it, that is where we are sending that address to. It may not be the most accurate place, but until we can have multiple employer addresses listed in our technology, it is being sent to the one location.

>> Who would we inquire with if they are going to other locations outside of the address we set up in the website?

>> I believe it is an update in the system that you would have to request a PIN. Person who is part -- is the administrator for the employer side. But I do not know enough about the process on how to update the address.

Sara, would you mind calling our customer care team to request that information.

>> Okay.

>> And I can give that number again. The customer.

>> I have it down.

>> It is 833-717-2273.

>> This is Monica Harper from common spirit health again. Tagging on to the issue about a PIN that gets sent. Although the problem that we are having, the same issues. We have got multiple hospital systems within our one area.

And the PIN is going to the wrong address, so it is hard to get that rectified. We have tried calling the customer care line and unfortunately, we have not been able to get through.

>> Yeah. We understand that frustration. This team unfortunately is not equipped to address individual employer account concerns.

That is all being managed by our customer care team. And I know that hold times have been long. And I do apologize for that. But that process is being managed by the customer care team. So I -- I understand it is a frustrating answer and I apologize for that. But I would encourage employers who have specific account issues and operational issues to give that number a call again and hopefully be able to get through and address the issue on that side.

>> Hello.

>> Hello.

>> Hi. This is Sabrina Venture from (indiscernible) and Moore. I was -- listen, I was curious we have folks going through the process and trying to escort them through and one of the things I have been noticing when I receive the paper saying that the claim had been received from, you know, like to the business, there was no way for me to see at least I haven't been able to find what documents had gone through. So like my person or if someone has like an update to the medical is there a way for the employer to submit the documents or is entirely on the employee? Because I don't want to -- like the form that I received is like do you want to contest it. And I don't want to contest it. I want to -- is there going to be a way for employers to see that.

>> Sure. So we do -- sorry about that. We do have certain privacy provisions in the law that make it explicit who we can and cannot discuss an employee's application with. Obviously, we very much encourage any kind of informal guidance you want to offer your employee to help them through the process.

But as far as personal documents the employee has uploaded, that is not something that the department is able to share directly with employers. Obviously, we certainly won't stop an employee who wishes to voluntarily share that information with the employer if they choose to do so.

But we in most cases involving application and approving the benefit and get the information that we need from the employee we are only authorized would work directly with the employee in the vast majority of cases. We appreciate your willingness and passion to open your employee out but as far as helping the employee get what they need to us and identifying what needs to be updated the employee would need to contact us directly to get the information.

>> Is that to include systems or notices that hey, I can return back to work or would I have to take that with a contest?

>> I'm not sure I understand. Can you elaborate more?

>> My apologies. If it is specifically a notice that the employee gives you the form saying I can return back to work or I can return back part time or I can return back light duty et cetera, et cetera, I wasn't -- I'm not seeing how -- is it incumbent upon the employee to then notify -- to notify your organization for that update? Or does the -- like the employer doesn't have to do anything?

>> Well, so as far as the ability to return to work goes, that generally will be managed between the employer and employee. As long as an employee submits to us a certification of a serious health condition that is expected to last for a certain duration of time, we will continue to pay the benefit as long as the employee files the weekly application with us.

And for the period of time that was approved by the medical certification until we receive information that the employee is no longer experiencing that serious health condition. Obviously, if an employee is back at work, then we certainly would ask that the employee not file a weekly application any longer.

Even if they might be entitled to it originally because if they are no longer experiencing a serious health condition and they are able to return to work, then they are no longer entitled to the benefit. So if and when that occurs, if it is prior to the original date for which leave was approved, then the employee would simply stop filing the weekly applications. And that would basically indicate that they are not requesting payment and we would not pay the benefit from that point forward.

>> Thank you.

>> Thank you.

>> We do have a comment here in the room from -- maybe one or two comments.

>> Thank you. Edsonya Charles. I just want to reiterate comments made by the notice we received.

My office has received lots of comments from employ years. Indicating their need to know whether it is intermittent leave or continuous and how they are able to determine that from what the department is currently sending and the familial relationships so they

know whether or not it is FMLA eligible event for purposes of job protection and continuation of health benefits.

Also would like to thank the rules drafters for providing guidance to employers and workers in 192-7020 sub three because we are receiving inquiries about what happens if the employee stops making payments or is not being paid by the employer how the healthcare premium portion that the employee responsibility is paid and whether or not an employer can drop the coverage if the employee fails to pay the employer portion.

You for providing that guidance -- thank you for providing that guidance.

>> All right. Thank you, Edsonya. One more comment in the room.

>> Karen Catey from Animal Supply Company. I just have a really small quick suggestion in 192-500-70.

I would suggest putting in personal injury because when I first read it I thought so they are going to get an injury on the job but that does down to the LMI tract and not the Paid Family and Medical Leave tract and is that something you are going to entertain under the rules? I would put when they experience a personal injury so that clarifies it is not a work-related injury.

>> Great.

Thank you very much for that. We will open up the phone again if anyone has any additional comments to provide.

>> Jason, this is Marty Carty at Matrix Absence Management again.

Your comment if -- your explanation a few moments ago about the employee will stop filing, stop filing claims if they return to work before the end of the approved leave period.

Does the employer, I hate to sound jaded, but what is to stop the employee from returning to work and still filing claims with the ESD for PFML because the employer doesn't get notice of the weekly claims so the employer has no way of knowing that the employee has returned to work and the employer has no way of knowing that the employee is still filing claims for benefits.

Another problem with the notice, the lack of notice to employers. Thank you.

>> Sure. That's a great question, Marty and we appreciate it. Fraud is always a major concern for any state program. And we are in the process of developing our processes to help identify when fraud occurs.

But, you know, obviously a lot of what we will be evaluating is going to be dependent on, you know, employer vigilance and other employees and a lot of fraud as indicated under unemployment insurance is based off of information received from external parties.

So I completely understand that employers -- I hope that employers are willing to be participants in the fraud pretension process. I understand that not receiving notifications of when an employee has filed the weekly application is a concern on that front and other fronts and I really do appreciate that comment, Marty.

>> This is April. While the obligation is to the employee to inform us or to stop claiming if they have returned to work, nothing prevents an employer from providing the status also.

I just want to restate what Jason was mentioning that while we are working on our fraud prevention processes that we have been receiving information from outside

sources when a person feels that somebody is claiming inappropriately so that does occur.

>> You are saying if an employer cares to, they can somehow and then my question would be by what method alert ESD that my employee has returned to work, just want you to know so that they won't be paid any further benefits. How would an employer go about that?

>> Sure, we currently are working own the processes for notification. But we have been receiving them through e-mail at this time.

>> Okay.

>> Nothing yet formal. But I believe it is our intention to have a formal process.

>> Is the current process of using e-mail would apply for any other issues the employer wants to raise with the ESD or alert them to?

>> I think that would be fair.

>> Okay. Thank you.

>> And just to follow up on that and also to address what I think I heard from a previous speaker is the fact that employers are not necessarily notified of when the employee has filed a weekly application but employers are required to be notified by the employee of exactly when they intend to take leave.

That applies to consecutive leave as well as intermittent leave. They are required to notify their employers these are the exact dates that I intend to take Paid Family and Medical Leave as a requirement under our law in order to be eligible for benefits.

If an employer was notified I'm going to take, you know, February 1 until March 1 off for Paid Family and Medical Leave and then return to work on February 24, which is a week early, that, you know, to Marty's point that might prompt action on behalf of the employer to notify us, they told me March 1 but they are back February 24, and that would be information that employers would be perfectly within their rights to share with the department.

And we would be eager to receive that information in the event that the employee does in fact file past a point that they would be eligible for benefits.

>> Employment protection laws that the employee is still required to maintain access to the employer as they are taking our leave so I encourage employers to continue communications with the employees as they are receiving our benefits.

>> And this is Darius. I will weigh in on what Marty says. And we sound like negative cynical people. I think -- I know, we are, Marty, right?

>> I believe so.

>> Especially where the intermittent leave is concerned the weekly filings are a concern for employers because there is no.

The employee might have taken the PTO pay and day off and also call ESD and the employer doesn't know. We think they are saving their Washington PFML, right? I think the weekly filings are concerning to a lot of my employers at least in the sense that they don't have any way to reconcile and know when to tell you that there might be a concern.

>> Thank you. We'll go ahead and take that into consideration as we further rulemaking.

>> And so --

(Overlapping speakers)

>> I want to follow up. This is Ali.

I want to follow up with another question about the processes that the employ years tonight see.

If somebody is approved for PFML and it is intermittent believe when they file the weekly claim for benefits saying I took these days off, is the department requiring the employee to prove that they gave the employee -- employer the appropriate notice of the leave whether it was foreseeable or unforeseeable that they gave notice so you know whether to approve the time or not?

Another big gap because employers may or may not get the notice from the employee and the department without verifying that may be approving benefits that haven't followed the proper notice procedure.

>> We do require an attestation from the employee on the initial application for benefits that they provided proper notice and the exact date it was provided. And when we send the notification that the employee has applied for benefits that date should be included.

So the employer has an opportunity to say okay, well, you know, they told you that they told me 45 days in advance when in reality they only told me 10 days in advance.

We absolutely want employers to have the information up front so that this he have an opportunity to contest the application because they have information that the department does not have.

That is going to hold true for the entirety of an employee's leave whether it is consecutive or intermittent. Notification to the employer is always, always, always required regardless of whether the initial application or throughout the life of the claim.

Whether it is 30 days for foreseeable leave or as soon as practicable for unforeseeable leave. If the employer feels they did not receive proper notice we want to know about it. Even though we might not be checking that on a weekly basis with the employee we are only checking on the front end, employers are still entitled to it.

For any hour of the leave taken, the employer is entitled to proper notice. If the employer believes that proper notice was not given that could initiate fact finding to determine what the employee did not give proper notice and are denied benefits. We are relying on them to be the guardian of that information and share with us when appropriate.

>> This is Ali with Pacific Resources. Need me to spell the name again?

There is no checks and balance for the notification when it comes to intermittent leave because ultimately at the end of the day the employee has the right to choose programs with paid components.

For employers trying to make sure they are not receiving more than 120% of the total benefit I can go to the state and submit intermittent absences without my employer being notified since I only got the additional identification.

I could receive optional benefits and the employer is not going to have any way of understanding did you apply for Washington for the same absence that you are applying from me for full benefit from.

I understand it's complex every time an employee submits the benefit. In order to do checks and balances to make sure that the employers and employees are taking the appropriate steps the additional notifications are really vital to keeping that in check and balance.

>> We appreciate that feedback and we understand this that employers are a bit -- understand that employers are a bit frustrated by this and it is something that we will take into consideration.

>> This is Sabrina again. On that one thing to maybe consider when working with employees as an advocate for them as well especially for foreign language employees who maybe can't read all of the English text or they are having difficulty with that in trying to support them I want to be able to help and guide them on that.

But if I'm also trying to work with them on the weekly, it gets kind of confusing. Is there going to be either a low English version or like that has more pictures and like things to go by process that might be more accessible to folks or different languages to help that out?

>> I know that right now many of our documents are available in English and Spanish and I know that in the future the plan is to expand that -- the ability for forms to be available in multiple languages. We have interpretations available few the customer care team -- through the customer care team.

If they would like a simultaneous translation they can request one and we will patch in over the phone. We are looking to reach out to English as a second language customers and we appreciate the feedback.

>> Thank you.

>> Hi, this is Sarah again from Travelers Insurance. I just had a quick question on if the notifications that we receive if they will ever include what the employees weekly benefit amount is or if that is something that you guys would ever be able to provide to the employer?

>> As an interested party to the initial determination employers are entitled to information relating to the employee's benefit.

It is not information that will be provided proactively by the department because it is not -- it has been determined that it is not necessarily information that employers, that most employers need to have to adhere to the responsibilities under the law.

However, as interested parties to the determination, the information is available if the employer chooses to seek it, they can contact the department and that information will be shared with them because they are interested party.

I know this comes up a lot with supplemental benefit payments.

>> Yes.

>> And employers top off the benefit that they get from the state, which is fantastic. And we don't want to create too much of a barrier with that. What we are seeing with lots of employers who are offering benefits that are supplemental and top off is that they are asking the employee to provide that information because even when you -- even if you have the base amount that the employee is entitled to, that does not necessarily reflect the actual dollar payment that they are getting from the state because they might be working and they might be claiming paid time off. It is not -- all of which will reduce the amount that they get from the state.

So even though employers are entitled to the base amount the employee may not be getting the full amount for a number of different reasons.

>> Yeah.

>> What we are seeing from employers in order to offer the additional benefits say through a short-term disability plan or parental leave plan, something.

>> Um-h'm.

>> Above and beyond what is required by law, they are asking employees to provide that information to them, you know, here is the amount that I actually got from the state. And then the employer can top that off. That cannot be a requirement as a condition of employment. The employer cannot say you will be disciplined in some way if you don't give me the information.

>> Yeah.

>> But it is perfectly acceptable to say you are potentially eligible for this additional benefit if you will give us this information we can top you off and you can get the extra money from us.

And then it is up to the employee to decide whether or not they choose to share the information with the employer. We are seeing that a lot as a way to get quicker more accurate information in terms of what the employee is actually receiving. Barring other avenues of fact-finding, the employer can call us up and they can receive the base payment amount that the employee is entitled to.

>> Okay. Thank you.

>> Any other comments on today's rules?

>> I would like to comment on something. My name is Lorna L-o-r-n-a. Klemanski, K-l-e-m-a-n-s-k-i. I'm with Shelland County Public Utility District.

And my concern is about the expansion of the definition of child to include child's spouse. I think that that is a bit of an overreach.

And you know, the child already has two parents and perhaps their spouse if they are married to care for them. For employers this means now there are five people eligible to take care of that child-in-law. And this is becoming an issue of not having people at work to do the jobs.

I think it is going to make Washington a very uncompetitive employer.

>> We appreciate that comment. And just to clarify, that issue is being addressed in the legislation, not in the rules that are being addressed today. So we -- you know, that is a perfectly valid comment, and if you wish to share that with your state legislators that would also probably be appropriate since that issue is being handled in the legislature as opposed to with agency rulemaking.

>> Thank you.

>> Any additional comments on today's rules? Final call for comments.

Well, we want to thank you for spending part of your morning with us. This has been very valuable to the policy team at Paid Family and Medical Leave.

We really appreciate the feedback and we will take every single comment into consideration as we move forward through this rule process.

As a reminder for next steps, the planned filing date of the CR-102, the proposed rules with the code reviser is scheduled for March 20. When the document and proposed rules are filed we will make them public in advance of the public hearing which is scheduled for May 4. The 103 hearing is scheduled to be filed on May 13 for an effective date of June 11.

So once again, we appreciate your participation in our rulemaking process. I just want to reiterate how valuable we find the sessions. And the rules are absolutely improved by feedback given by participants just like those in stake meetings. Thank

you again so much. I appreciate the time and enjoy the rest of your Thursday. Thank you again.