

REALTIME FILE

Phase 3, CR102 Formal Hearing
Washington Employment Security Department

March 13, 2019

CART/CAPTIONING PROVIDED BY:

ALTERNATIVE COMMUNICATION SERVICES, LLC

www.captionfamily.com

* * * * *

This is being provided in rough draft format. Communication Access
Realtime Translation (CART) is provided in order to facilitate
communication accessibility and may not be a totally verbatim record
of the proceedings.

* * * * *

>> CHRISTINA: We are ready to begin today's hearing.

Pursuant to the authority given under Washington state law 50A.04.215, Chapter 42.30 RCW of the Open Public Meetings Act, and Chapter 34.05 of the Administrative Procedures Act, this hearing is hereby convened.

For the record, this hearing is beginning at 9:07 on March 13, 2019, at 640 Woodland Square Loop in Lacey, Washington, in the Park Place conference room.

This hearing is convened to consider testimony concerning Phase 3 of the Paid Family and Medical Leave Rulemaking. Rules in this phase relate to benefit applications, benefit eligibility, and other topics related to establishing this program.

Notice of this hearing was filed in the Washington State Register on January 7, 2019, as WSR No. 19-03-035. It was sent to interested parties, and it was posted online.

My name is Christina Streuli, and I am the rules coordinator 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 the public rulemaking hearing.

There are several staff today from the Paid Family and Medical Leave policy team attending this hearing, and I'll have them introduce themselves by name and title.

>> APRIL: Thank you for being here today.

My name is April Amundson. I'm the policy analyst with

Paid Family and Medical Leave.

>> BRITTANY: And I'm Brittany McVicar, also a policy analyst with the same program.

>> CHRISTINA: Thank you both.

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 begin your testimony.

Please also note that this hearing is convened to consider comments to the proposed rules. Because of the formal nature of the hearing, we are unlikely to answer any questions you have, and we're unlikely also to make my commitments based on your comments. If you do pose question, I will ask you to rephrase your question as a comment.

Questions, however, can be sent to our online portal, which is managed by the policy team and, can be found by typing the following address into your browser window. The browser address is b-i-t period l-y forward slash commentforum, and "commentforum" is all one word.

A concise explanatory statement of the agency's reasons for adopting the rule, including a summary and a response to all the comments we received after publication of the proposed rule, will be placed in the permanent rulemaking file and also posted online for anyone to view.

The document will be sent to all interested parties who have signed up to receive Paid Family and Medical Leave

e-mails, which I recommend you all do.

We will begin today with April Amundson, who will provide a brief explanation of our proposal.

>> APRIL: Thank you, Christina. And thank you again for coming to our public hearing.

The Paid Family and Medical Leave act was passed by the Washington state legislature in 2017. January 1, 2019, employers could start assessing premiums on employee wages, and applications will be accepted in 2020.

We have split the rulemaking phases to align with this aggressive but achievable schedule. And the formal public hearing covers the topics of benefit applications, benefit eligibility, and other topics related to the establishment of the program.

The rules span several topics under the umbrella of benefits that include at a high level the requirements for when and how an employee must provide notice to an employer that the employee's seeking to take leave, what information an employee may need to provide the Department when seeking benefits, whether and how an employee can apply for benefits, how benefit calculations will be accomplished, and whether and how an employer can use an authorized representative.

In addition, these draft rules contain several definitions that will pertain to all paid family and medical leave. The rules have a bit more information about how the Department will assess premiums when condition waivers expire, and a few other topics, as well. I encourage everyone

to read the text in the rules for a more robust understanding as there's a lot that's not being mentioned here today.

The draft rules are intended to interpret and clarify the Title 50 of the Revised Code of Washington.

Again, thank you for your interest and participation in our rulemaking efforts to implement this important program. And we look forward to hearing your comments today.

>>CHRISTINA: Thank you, April. That was very concise.

We will now take testimony from those in attendance today.

To keep us organized and to avoid talking over each other with those in the room and those on the phone, we're going to first take all the testimony from those who are physically joining us today in the room. So we'll open the phone for comment once there is no more comment in the room just to keep us organized.

Remember, when you testify please speak directly into the microphone. They can be touchy microphones in the room. Please state your name, spell your last name, and if you are here in a representative capacity, please say so, as well.

We are now ready to accept public comment from anyone in the room.

>>: Good morning. My name is Lori Grassi. That's L-o-r-i, last name G like George r-a-s-s like Sam i like Ida. I'm here today representing the Washington State Chiropractic Association as follow-up to a letter sent on

February 27, 2019, although the letter said '18.

I would like to make comment specific to WAC 192-500-090 requesting that chiropractors be included in the list of healthcare providers eligible to certify a serious health condition.

Currently chiropractors determine time loss for injured workers. They perform second opinions. And the Department -- and for the Department, and they rate disabilities. So they're in the same status as a medical physician for determining all kinds of health conditions for injured workers, which makes it consistent for other State agencies to include chiropractors, as well. They're licensed currently under RCW 18-25, and within their scope of practice they are able to certify serious health conditions.

RCW 48.43.515 gives chiropractor -- or patients, actually, direct access to chiropractors without needing a referral in both state health programs as well as private health-insurance programs.

The Labor and Industries statute is 51.36, and as I mentioned, they're able to manage all health conditions for injured workers and currently are managing one-third of the state's occupational low-back-pain injuries.

I would like to offer to you Dr. Morgan Young, who is the associate medical director, who is no longer a practicing chiropractor. He's full time with Labor and Industries, who's replaced former Dr. Bob Mootz, who was the first ever

chiropractor in an associate medical position in the entire country. So Washington is leading in that regard, and he's been made available to you for any questions that you might have on the clinical side.

In terms of the clinical aspects, I can take questions from you and provide follow-up if needed. But at that point, that concludes my testimony.

>> CHRISTINA: Thank you very much for that.

I just want to make sure. I'm going to repeat every comment back to make sure I've gathered it correctly. So what I heard was really a desire to call out in 192-500-090 chiropractors specifically as a healthcare provider. Is that correct?

>>: Yes, to be listed in the current list of providers that are there. You have other professions listed that have less education, less training in this regard. And there are others that have more. And we feel like we should be included, as well.

>>CHRISTINA: That's a great point.

Thank you so much.

All right. We are taking testimony right now from anyone who is physically in the room here in Lacey before we open for the phone.

Is there anyone else physically in the room in Lacey that would like to testify today on Phase 3 rules?

Well, thank you for those who testified in person in the room today. We're now going to open the phone for public

comment.

This can be a little messy when we talk over each other, so just remember to unmute your phone, state your name, spell your last name, and state who you represent if you're here in a representative capacity. And then when you're done with your comment, go ahead and remute your phone for us.

So we are now open for public comment on the phone.

>>: Hi. This is Lori Welty with FINEOS. Last name is W-e-l-t-y.

And I have a comment on two of the sections.

Can you hear me?

>>CHRISTINA: We can. Go for it.

>>: Okay. Great. Okay. The first comment is on Section 192-500-070, the definition of "claim year."

And I note that for all other qualifying events other than the birth of a child a claim year is a 52-week period beginning the Sunday of the week that an application was filed, a timely and complete application.

And I note that that can be confusing when, if employers are trying to figure out how much time an employee has available to them, oftentimes the way that calculation is done is by the date of the event itself, like the date the leave would begin, as opposed to the date the application is completed because the date of the application can vary, you know, largely from the date of the leave. So it can be well before the leave, or it can be actually after the leave.

So if the entitlement to your 12-week period where your

claim year is calculated is based on the completion of an application, that can get confusing because it's not timed to the actual leave event but rather timed to the application.

The other section is 192-610-055, where it talks about what is an employee's maximum benefit length. And in there it states that -- it states that, "The maximum duration of paid family leave may not exceed twelve times the typical workweek hours" And then it says, "The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours of during a claim year."

It's unclear in reading that whether or not that applies -- whether or not that maximum 12-week period is talking about benefits, like payment, or whether it's talking about leave entitlement.

And it seems to be talking about both, and certainly seems to be talking about leave entitlement because it says "the maximum duration of paid family leave" and "the maximum duration of any medical leave" is 12 weeks.

And the reason why this is confusing is because I've been informed that the waiting period of seven days is job protected. And so if the waiting period is job protected and that is a one-week period and the maximum duration of leave is 12 weeks, then it seems there's only 11 weeks left of paid benefits.

So I think there's a confusion there as to what the maximum entitlement of leave is and the maximum entitlement of benefits is.

And those are my two comments.

>>CHRISTINA: Well, thank you very much for coming forward with those comments. I just want to repeat them back to you to make sure I've got them accurately.

So what I heard was on 192-500-070, the date of the event itself and the date of the application are often different, and you'd like a little clarity there on that issue. Is that correct?

>>: Yes.

>> CHRISTINA: And then second, I heard that -- on 192-610 055, really a question about how the waiting week sort of interacts with the 12 weeks of -- that's listed in there and whether that's related to benefit payments or leave entitlement.

>>>>: Correct.

>>CHRISTINA: Okay. I've got that down. Thank you very much for bringing those forward.

>>: Okay. Thank you.

THE REPORTER: Can I ask for Lori to spell her first name?

>>CHRISTINA: Lori, could you go ahead and spell your first name for us?

Lori, are you available to spell your first name for us, as well, today?

>>: Oh, yes. Sorry. It's L-o-r-i.

>>CHRISTINA: Thank you so much. Sorry about that.

>>>>: No worries.

>> CHRISTINA: All right. Other comments from people on the phone today about Phase 3 rules?

>>: Hi. This is Megan Holstein, also from FINEOS. My last name is spelled H-o-l-s-t-e-i-n, first name Megan, M-e-g-a-n.

>>CHRISTINA: Thank you very much. Go ahead.

>>: My comment pertains to the employee notice to employer, specifically WAC 192-600-025. If an employee fails to provide proper notice, the regulation or the rule discusses how the Department may deny benefits. But there's no discussion about the job-protected time off and whether an employer can deny the job-protected time off.

So my comment is to include implications of the job-protected time off, the leave, not just the paid benefits, under the employee-notice section of the rules.

>>CHRISTINA: Thank you so much.

So what I heard was, on WAC 192-600-025 some ambiguity about whether the employer can deny job-protected time off for failure to provide that notice.

>>: Yes.

>>CHRISTINA: Excellent. Thank you so much for that comment.

>>CHRISTINA: Who would you like to be next today in our public comment for Phase 3 Paid Family and Medical Leave rules?

>>: This is Stephanie Collin from Puget Sound

Energy. Stephanie, S-t-e-p-h-a-n-i-e, Collin, C-o-l-l-i-n.

We have a comment regarding WAC 192-610-015 about the documentation for certification. It doesn't specify how long an employee has to submit the documentation, which leaves the employer not knowing if the employee will be completing their claim in time.

>> CHRISTINA: Let me see if I got that accurately.

On WAC 192-600-015 a question about how long the employee will be allowed to have to fill out the documentation. Is that correct?

>>: Yes.

>> CHRISTINA: Okay. Thank you for bringing forward, that ambiguity there. We'll take a look.

Other comments today on Phase 3 rules? Our phone line is open, and we are happy to receive comment on Phase 3 of the Paid Family and Medical Leave rules whenever anyone is ready.

Is there any further testimony from anyone on the phone regarding Phase 3 of the Paid Family and Medical Leave rules?

All right. I'm going to open up the room again and the floor for any comment.

Is there any further testimony concerning the proposed rulemaking from either in phone -- or in person and on phone attendees before I conclude this hearing? I'll leave the line open for a couple of moments here to allow everyone who wants to testify to be able to do so.

Hearing no further testimony from anybody either

participating remotely by phone or participating in person in the room today, we are ready to close this hearing.

In conclusion, this hearing was convened to consider testimony on Phase 3 of the Paid Family and Medical Leave Rulemaking related to benefit applications, benefit eligibility, and a few other topics related to establishing the program.

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

The deadline for submission of written comments is 5:00 p.m., Monday, March 18, 2019. You can submit written comments online by entering bit.ly/commentforum into your browser. Comments must be received by the deadline of 5:00 p.m., Monday, March 18 to be considered as part of the Phase 3 rulemaking.

A final decision regarding adoption of these proposed rules will be made after all testimony from oral and written comments have been fully considered, with a target date of March 22, 2019.

On behalf of Commissioner Suzi Levine ,I thank you very much for participating in this hearing.

This hearing is adjourned at 9:27 on March 13, 2019. Thank you all very much.

[End of meeting.]