

REALTIME FILE

Phase 4, Stakeholder Meeting  
Washington Employment Security Department

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>> JASON: We'll go ahead and get started. Thank you all very much for joining us this morning both here in the room and remotely. Before we begin, let's just do a quick round of introductions for Employment Security staff that are leading today's meeting. My name is a Jason Barrett. I am the lead policy analyst for Paid Family and Medical Leave.

>> APRIL: Hello. Thank you for being here today. My name is April Amundson. I am a policy analyst with Paid Family and Medical Leave.

>> CHRISTINA: Good morning. My name is Christina Streuli and I am the rules coordinator.

>> MATT: My name is Matt Buelow and I am the policy and rules manager.

>> BRITTANY: And I am Brittany McVicar and I am a policy analyst with the Paid Family and Medical Leave program.

>> MATT: If you're joining us by phone and you can hear me, will you please send a message that you can hear us. We're testing the audio.

[Pause in the proceedings]

>> JASON: Can folks on the phone hear us now?

>> Yes, I can hear you.

>> JASON: Great. Sorry about that. We really appreciate your patience.

>> No worries. Thanks.

>> JASON: All right. Let's try this again.

Thank you so much for joining us here this morning. My name is Jason Barrett. I am the lead policy analyst for Paid Family and Medical Leave. I am joined here by my colleagues on the policy team. Just kind of in the interest of time, I think we'll forego reintroducing ourselves one by one. So we'll just dive right into our agenda for this morning's meeting.

So for those who may not be familiar with our process, we are holding this meeting to review the second draft of Phase 4 rules. This is the second stakeholder meeting for Phase 4. We are in the middle of a very robust rulemaking process around Paid Family and Medical Leave here in Washington State.

Phases 1 and 2 have already gone into effect. The agency filed its Phase 3 102 last week, which will result in the rules go into effect later this year for Phase 2 after we have our public hearings, one here in Lacey, the other in Spokane next month.

Phase 4, which we are discussing here today, is planned to have the 102 for that phase filed in March also with the two hearings to follow in May.

Phase 5 we have filed our 101 to begin preliminary rulemaking. We had our first listening session here in Lacey on Phase 5 last week, and we will continue to move through Phase 5 later on. You can check out our rulemaking website at [bit.ly/commentforum](https://bit.ly/commentforum). All of our updates on rulemaking are posted at that location. You can see our timeline for each of our six phases of rulemaking for Paid Family and Medical Leave. You can also see the latest draft of rules that are available for public comment. You can post comments on those rules. You can also post general questions and answers about paid

family and medical leave in general, questions that are not necessarily specific to the rules that our care team very diligently monitors and responds to quickly. So please head to [bit.ly/commentforum](https://bit.ly/commentforum) for more information about our general rulemaking process.

So with that, I think we will move into our Phase 4 draft 2 rules discussion, which is the bulk of today's meeting. For those here in the room, we have printouts of the rules by the door. For those joining us online, if you have not already obtained a digital copy of the rules that we are discussing here today, you may do so at that [bit.ly/commentforum](https://bit.ly/commentforum) site that I mentioned before. Under the info tab, head to Phase 4 and you can see a link to the second draft of Phase 4 rules which we are discussing today. I'll give folks on the phone a moment to head to that website if they need a second before we dive in.

So with that, let us move into discussion on Phase 4 rules. The first rule that we will open the floor for comment for is WAC 192-500-110, definition of a week. The way that we would like to do this, in order to maintain some structure and order and prevent people from talking over one another, is we will open the floor up here in the room for comment first and then we will take it up to the phone for comment on each rule. We will move through each rule one by one until we finish.

Also, please note that we do have a stenographer with us here in the room, so when you either approach the microphone or speak into your phone or microphone to offer comment, if you could please give us your full name and your organization that you may be representing here today. If you could please also speak clearly and slowly so that our stenographer can be sure to capture everything accurately, we would very much appreciate that.

Once again, let's open up the floor for folks here in the room to offer comments on 192-500-110, definition of week. Seeing no comment here in the room, let's open up the phone to comment on 192-500-110. And we're going to unmute everyone here so that anyone who has a comment, just speak up and we will be able to recognize you for your comment.

>> I'd like to make a comment.

>> JASON: Go ahead.

>> My name is Spencer Leese, L-E-E-S-E, representing WaferTech down here in Camas. We're a 24/7 operation and the work week you are defining, it splits right across a shift for us, and so we'd like to recommend that you consider either having a defined week with an option for the employer to define a different week or put some flexibility into the definition of week so that it can flex six hours or 12 hours one way or another.

>> JASON: So, Spencer, if I'm hearing you correctly, you're saying you would like to see a little bit more flexibility in the definition of week to allow for shifts that might cross over a Saturday night into Sunday morning; is that correct?

>> Correct.

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

>> JASON: Any further comment on the phone on 192-500-110?

>> Yes. My name is John Bagge, Twelve Baskets Catering.

>> JASON: John, I'm sorry, I'm sorry to interrupt you. Would you mind spelling your last name for us.

>> B-A-G-G-E.

>> JASON: We're having a little trouble picking you up here, John. Could you speak a little bit louder?

>> Is that better?

>> JASON: That's a little better.

>> I'm sorry. I'm on my iPhone. You said b-i-t-l-y forward slash comment forum. Is there a dot com in there, is there a -- I'm still having trouble finding it.

>> JASON: Sure, sure. I'll repeat the address. It's b-i-t dot l-y forward slash commentforum, one word.

All right. Hearing no further comment on this rule, we'll move on to 192-500-120, definition of employee fraud. Any comment here in the room? Any comment on the phone?

Okay. Hearing none, moving on to WAC 192-500-130, definition of non-disclosure. Comments here in the room? Comments on the phone?

Hearing none, we'll move to WAC 192-500-140, definition of willful non-disclosure. Comments in the room? Comments on the phone?

Hearing none, we'll move to WAC 192-500-150, definition of misrepresentation. Comments in the room? Comments on the phone?

Hearing none, we'll move to WAC 192-500-160, definition of continued claim. Comments in the room? And on the phone?

>> Excuse me, are we still there? Are we muted?

>> JASON: No, you're not muted. We can hear you.

>> Okay. Okay. Going back to the misrepresentation.

>> JASON: Could you give us your name and your organization, please.

>> Sorry. Spencer Leese, L-E-E-S-E, at WaferTech. As far the definition of misrepresentation, you put the term knowingly made a false statement. Who is going to be the determiner of that knowingly standard? Is that going to be determined? I mean, obviously, I don't think the employer would necessarily be able to provide evidence of that or be obligated to for the Department to make a decision.

>> JASON: So the Department will be the determiner in the event of a misrepresentation case, the Department will conduct an investigation, and in the course of that investigation, the Department will determine if a false statement was knowingly made.  
>> Okay. Thank you.

>> I have a follow-up question to that. If an employer is doing a voluntary plan, then the employer is making that decision since they're the ones paying the benefits?

>> JASON: Sorry, before I answer, would you mind just identifying yourself.

>> Sure. Daris Freeman with Unum.  
>> JASON: Would you mind spelling your name for us. I'm sorry.  
>> First name is D-A-R-I-S, last name Freeman.  
>> JASON: So thank you, Daris. Yes, in that event, the employer would be the one making the determination  
>> That's my assumption. Just wanted to clarify.  
>> JASON: Okay. Moving on to WAC 192-500-170, definition of self-employed. Any comments here in the room? Comments on the phone?

>> This is Shannon Lawless on the phone. Can you hear me?

>> JASON: Yes.

>> My comment is about 6(b) and 6(c) of this rule, and my suggestion would be that those portions of the rule simply be eliminated. I think they're confusing and pretty circular. So with regard to 6(b) in particular, it says a self-employed person is not someone who meets the definition of an employee, but the definition of employee in the law is very, very broad and can potentially encompass some of the folks here that you're saying are self-employed such as a member of a limited liability company, so by referring back to the long definition of employee, that just is confusing and it kind of reiterates the confusion that I think made us need the WAC in the first place, which I do really appreciate that there is a law on this issue now or a rule in development.

And with regard to (c), a person who doesn't meet the circumstances of RCW 50A.04.010(7)(b), that just says self-employed individuals and then lists out the criteria for being an independent contractor under the law. So it just says a self-employed person has to be a self-employed individual, and that's not really very meaningful, so I think this regulation would be a lot clearer if you just eliminated those two points.

>> JASON: That's a very helpful comment, Shannon. Thank you very much and we'll do what we can to offer some clarity around sub 6 of this WAC. Thank you.

Any other comments on definition of self-employed?

All right. Hearing none, let's move to WAC 192-510-025, reportable wages for premium assessment purposes. Any comments in the room? Comments on the phone?

>> I have a comment.

>> JASON: Yes.

>> Margarita Contreras with Symetra.

>> JASON: Go ahead, Margarita. Thank you.

>> Your example states that through an internal short-term disability benefit, the employer pays the employee the remaining 39 percent of the typical weekly wage. So are you saying that we're going to be able to offset, because I haven't heard confirmation on that?

>> JASON: So offsetting, employer offsetting of the state benefit paid to the employee is permitted through an employer benefits program such as a short-term or long-term disability program. Any payments made to the employee using this mechanism as a way to supplement or top off the state benefit to the employee in order to

make the employee whole in terms of his or her typical weekly wage is perfectly fine. The Department will not assess that as a wage and that is permissible under the law.

>> So we'll have to calculate that separately when we're reporting wages to you?

>> JASON: No, those payments won't need to be reported as wages at all. The Department does not consider a benefit payment through an internal benefits program as a wage.

>> Okay.

>> This is Jenny Haykin with Puget Sound Energy, last name H-A-Y-K-I-N. I have a follow-up question to that. The rulemaking indicated employees could not use PTO, but that would be the mechanism that we would have to make employees whole, as you said, so it can only be short-term or long-term disability and not PTO; is that correct?

>> JASON: That is correct. Under the current construction of the law, the Department considers wages paid through sick leave, vacation leave, other types of paid time off, as a wage, so the Department would consider any kind of top off using PTO as a wage at this time with the current wording of the law

>> Okay. Thank you for the clarification. I appreciate it.

>> This is Shannon Lawless. Is that something that's expected to change with the new legislation that's going to be proposed or is there a plan to make it so that the employer can use PTO to top off?

>> MATT: Hi, Shannon. This is Matt Buelow. We have no idea what legislation may or may not go through the Legislature this year, and it would be premature for us to speculate on that, but it is something that we know that the Legislature has some interest in and we don't know what the outcome of that will be.

>> I have one more comment on this WAC, which is I would request that the Department address the issue of stock options, so there is a part in here about the value of stocks, but to specifically add stock options.

>> JASON: To add stock options as a wage?

>> Well, I guess I don't really care if they're a wage or not, but just to get some clarity if the Department considers them to be a wage.

>> JASON: Understood. Thank you for that comment.

>> This is Jamie Bailey. I have a follow-up question from the preceding question regarding the STD, LTD supplements. Do you consider an SCP plan, or salary continuation program plan, to be something that can be used to supplement pay? It's not a strict short-term disability plan, it's continued salary for an exempt work force.

>> MATT: Hi, Jamie. This is Matt Buelow. Honestly, that's not a term that we're familiar with here at Employment Security, we're hearing it for the first time, so I don't know that we're prepared to answer that on the call today. At the end of our presentation, we're going to give some ways to contact us. If you could send us some specific information regarding how that works, we'll be able

to give you a definitive answer most likely, we just need to understand it a little bit better. And so there will be an email address that we'll provide at the end and if you can send that question over, we'll be able to get an answer for you.

>> Okay. Thanks. And do you know off the top of your head whether a program for paid bonding leave is something that we could use to supplement the state fund set? It's not part of a traditional PTO bucket used for, you know, like -- it's a separate benefit used exclusively for bonding made with its own eligibility requirements.

>> MATT: Gotcha. I don't think that's one we can answer off the top of our head as well. It's one we'd also like to get a little more detail, take a look at, before we can give a definitive answer.

>> Okay. Thanks.

>> Just to add on to that last comment, and this is Shannon Lawless again, I think that would be really helpful and I would urge the Department to consider those to be equivalent to a short-term disability benefit, but a lot of my clients, they will just have a policy where, especially during the bonding leave, they'll just continue the employee salary for, say, 12 weeks at hundred percent pay for at least certain employees, and they want to be able to continue doing that in sort of a supplemental way, have the employee go to the state and then -- last part, but they don't call it a disability plan, they just -- it's looked at as salary continuation or just consider it a separate bucket of leave, so adding some clarity that those types of programs are permissible and are not considered a wage would be really helpful.

>> This is Daris Freeman again with Unum. I would reiterate that, and I'm just curious, and I don't know if you can tell us on the phone, but I've struggled in reading the statute and the law as written to see where it tells me that any kind of wages eliminate the ability for benefit, which is where we get to this issue of the fact that PTO can't supplement. I see what family leave is and that medical leave are and they all talk about leave and none of it talks about without any wages, so I'm just -- I'm sure there's something and I'm just missing it, but it would be very helpful for me to have that reference as I'm challenged on that.

>> This is Gina Rutledge (phonetic) from MetLife. I'd also like to weigh in that -- employers have different types of child bonding, whether it be a paid paternal leave or a secondary caregiver leave, and employers are really aware when their partner, maybe the primary caregiver, has issues with delivery so that child bonding leave can be taken at different times, so clarification is definitely needed for all types of overlapping benefits that the employers are providing voluntarily today. Thank you.

>> MATT: Thank you for that comment. I did want to get back to the question, and my apologies, I forgot the name of who asked it, about the question of how do we reduce benefits. It's not explicitly clear in the law, I mean, I will tell you that now, but under RCW 50A.04.020 sub 2, it talks about prorating the percentage of hours that someone is on leave by their typical work week hours, so if someone is

receiving a wage for a portion of those hours, they would get a prorated amount of Paid Family and Medical Leave benefits.

>> I have a comment. My name is Spencer Leese, LEESE, WaferTech. I have a question about the definition of separation pay and whether that includes severance arrangements made in exchange for relief of claims. I would assume that's something different. And then a second question that I have is regarding retirement benefits and whether if we have some sort of retirement benefit arrangement that results in a payment, whether that would be includable as wages.

>> JASON: So, Spencer, to your first issue on severance pay in general, we do consider severance pay a wage. We do have a WAC, I believe it's in effect today, that essentially means, says that severance pay should be reported as wages paid to the employee, but there are no hours to be reported along with that pay, so that's how employers should plan to report severance pay; report the dollar amount, but no hours. Your second scenario I think involved some kind of settlement, is that correct, retirement?

>> Just in terms of severance is not being paid as a wage, it's being paid as a settlement to legal claims.

>> JASON: So the employee is -- there is some kind of legal agreement where the employee leaves the employer and the severance package is paid to that employer?

>> The severance package is paid to the employee --

>> JASON: I'm sorry, to the employee, yes.

>> -- in exchange for the employee relieving claims against the employer.

>> JASON: Right. So, in general, as I said, we do consider severance pay as a wage. As far as the conditions of that severance, I don't believe we have contemplated any kind of legal requirement or legal attachments to that severance being paid, so we will definitely discuss that on our end and determine if any kind of further clarity is needed

>> Yeah. I would think that probably, right, because it really couldn't be just reworded as a settlement rather than a severance, so I would just be careful getting into the nomenclature there

>> JASON: That's a great comment. Thank you. And you also mentioned pensions and retirement pay. Those types of payments are not considered a wage under Paid Family and Medical Leave.

>> Thank you.

>> This is Jennifer Dixon, D-I-X-O-N. I'm with Chelan County PUD. And I'm curious with RCW 50A.04.010, it says that -- defines wages as the same as the RCW for unemployment. And I received several emails from the ESD helping me try to define what wages were, and they've excluded sick leave as wages. Both unemployment doesn't include sick leave and my emails from ESD previously excludes sick leave. But (h) includes sick leave so I'm getting criss-crossed information. And so is it the same as unemployment wages or is it not, because this list is slightly different than what unemployment is?

>> MATT: Thank you for the question, Jennifer. This is Matt Buelow.



To address kind of the overarching question of is it the same as unemployment, the answer to that is no. So the law points to a very specific section of the unemployment statute, not the entirety of the unemployment statute, so there is further definition of wages in RCW Title 50 around what are wages for unemployment. The Paid Family and Medical Leave law currently points only to subsection 2 of that definition, so it does not bring the entire definition of what wages are for unemployment purposes. And under Paid Family and Medical Leave, we do consider sick leave to be a wage. And I apologize if you've gotten different information from the Department, you know, as we're developing this entire program, sometimes things can get a little -- we can get some mixed signals internally or we change our minds and that sort of thing. I will take that note and go talk to our folks that are answering that email to make sure we're giving consistent and accurate responses to that, so I apologize for any confusion.

>> A follow-up question to that. So we've already cut our first check of the year which required these premiums, but, yet, you guys are still at rulemaking telling us what wages should have premiums, so will there be a waiver on penalties for not deducting premiums on wages that should have been deducted or how will this be handled going forward until we have a firm definition of what wages should have premiums deducted?

>> MATT: That's something that we will have to talk about internally here. I don't have an answer for you right off the cuff.

>> Thank you.

>> JASON: Okay. Hearing no further comments on this WAC, we will move on to 192-610-070, claim cancellation. Are there any comments here in the room? Any comments on the phone?

>> This is Daris Freeman with Unum again. I just have a question on the 30-day limitation. A lot of employees, at least for disability claims and things like that, file far in advance of 30 days, pregnancy in particular, so for an employee that filed months in advance, will they not be able to cancel that claim if they don't do it within the first 30 days?

>> APRIL: If it's for family leave in regards to a birth, the effective date of a claim starts with the date of the birth, so they would have 30 days from that effective date to cancel a claim.

>> But the proposed regulation talks about within 30 days of the date of submitted application, so I guess that's why I'm confused, because they may apply -- at least we see applications way far in advance on the disability and family leave side, paternity pay claims, so just something you may want to think about. And I don't know, maybe you'll reject those claims and won't allow them to be filed more than 30 days in advance, but that's where to me I would request some clarification.

>> MATT: Okay. Thank you for that comment, Daris. That's great feedback and we will take that under consideration.

>> This is Gina Rutledge (phonetic) from MetLife. We sincerely appreciate your examples. A certain type that you may want to give

better walking through this is what happens for pregnancy because they do use both medical and the child bonding together, and many times I agree that both claims are filed with an expected due date, which could be brought in a lot earlier, or it could be extended, and the child bonding, you could get anywhere from, you know, three months in advance because the employee is trying to file all of their paperwork before the event happens, because they don't know what will happen after the event happens, so just food for thought when doing examples, pregnancy directly and the child bonding is a great and a frequent event that you may want to have mapped out.

>> JASON: Thank you for that comment. We'll definitely consider adding an example just to clarify exactly how this type of cancellation might occur and how an individual who is using a combination of medical and family leave might have to abide by this rule, so we appreciate that.

>> JASON: Hearing no other comments, we'll move on to WAC 192-610-075, employer requiring employee use of PTO. Any comments here in the room? Comments on the phone?

>> This is Shannon Lawless, and I'm wondering how this applies to the waiting period, so if somebody has a seven-day waiting period before medical leave goes into effect, can the employer require them to use PTO during that seven-day waiting period?

>> JASON: So the employer cannot require them to use paid time off during that waiting period. The employee would potentially have the option to use PTO if they wanted to, but the employer could not require them to do so. And a lot of this stems from the FMLA requirement, I should say, option that allows employers to require their employees to use paid time off before FMLA benefits, or the job protection under FMLA applies. That provision does not exist in Paid Family and Medical Leave. There is a specific provision in federal code that allows employers to have that requirement, but there is no such requirement in Paid Family and Medical Leave

>> This is Daris Freeman with Unum again. So you just made the comment that employees could choose to take PTO during the waiting period. I had been told previously that that would then not satisfy a waiting period because PTO is wages, and to the conversation we just had, if they're receiving wages, they can't receive benefits, so how does the waiting taking PTO -- can they take PTO during their waiting period because I was told they could not and it would not satisfy a waiting period because they were wages?

>> MATT: Thank you for the question. To answer that question, to count for the waiting period, an individual has to be eligible, otherwise eligible for some Paid Family and Medical Leave, so PTO can be taken during that waiting period, but it cannot be taken for the same amount as the typical work week hours where it would disqualify the individual from a waiting period. So for illustration purposes only, let's pretend someone's typical work week hours are 40. If they were to take 20 hours of PTO as an example, assuming otherwise eligible, then it could count as their waiting period, but if they took 40 hours of PTO, it would not.

>> I would recommend that that get clarified through this rulemaking process because I think that's -- I'm having a hard time following the rationale there based on the statute, so I would ask for some rulemaking in that area on the waiting period. I think somebody else probably has something else to say, too.

>> Yes, this is Jenny Haykin at Puget Sound Energy. So the statement that was just made about not being able to use PTO on a full-time basis means employees cannot get paid their hundred percent of their wages during the waiting period, which I don't think is the intent of the law. If an employee wants to be paid during the waiting period and that money is available, I don't think that should be limited.

>> MATT: Thank you for the comment.

>> You I agree -- my name is -- I was just saying that I agree benefits available and use them during the waiting period.

>> JASON: Thank you for that comment, and would you just ID yourself real quickly.

>> Yeah, John Bagge, Twelve Baskets Catering.

>> JASON: And I think there were other comments as well.

>> I have a question to that example you just gave. This is Lori Welty (phonetic) with -- and you mentioned that if somebody is paid for 20 hours, that could still count as a waiting period. How far does that go? Could they be paid for 35 hours if their normal work week is 40 hours?

>> MATT: As long as the individual would otherwise be eligible for a payment of Paid Family and Medical Leave, so one dollar or more, and meet all the eligibility requirements, it can count as the waiting period. So it's not a magic number. It just really depends on the individual circumstances. Does that make sense?

>> It does, but the qualifying feature is they have to be paid for -- what their work week really is?

>> JASON: I'm sorry, that comment was a bit muffled. Could you repeat that question?

>> It sounded like what you were saying is during that waiting period, the only way the waiting period to count as the waiting period is if they are paid for less than what their true work week -- the example you gave is if they are paid for 20 hours for a 40-hour work week, then that would be fine, that would count as a waiting period. So my question was if they're paid for 35 hours and the normal work week at 40, would that count as a waiting period?

>> JASON: It could potentially, so long as they would otherwise be eligible for at least one dollar of benefits for that week, then that PTO could count during that waiting period.

>> Okay. Thank you.

>> This Jamie Bailey from G.E. So are you saying we could pay them their full wages less one dollar during the waiting period?

>> MATT: First I'm going to mute that mike. My apologies. I don't know what caused that feedback. I'm going to move the conversation forward. It's clear that we have some rulemaking to do around the waiting period and I don't want us to get stuck in a semantical conversation here in this rulemaking hearing. We are happy to answer

questions if people want to contact us outside of this rulemaking hearing, but I want to make sure that we have time to get through all the rules.

>> And I apologize, I do have one slightly separate question about this WAC, this is Spencer Leese, L-E-E-S-E, from WaferTech. Our reading of this is that it is in direct conflict with the rules of FMLA and so we're having a hard time understanding how those two, how that conflict is going to be resolved, so, you know, please look at the FMLA regs closely and make sure that there's not a direct conflict between this section and the federal statute

>> JASON: Thank you for that comment.

>> This is Margarita Contreras with Symetra. I have an additional comment.

>> JASON: Go ahead.

>> My comment is to this WAC. So if an employee takes advantage of the state leave for, let's say, 12 weeks and we as an employer provide them a week of sick, four weeks of bonding under caregiver or medical leave, the employee is now entitled to 12 plus five weeks since we didn't require them to take any paid time off; is that correct

>> JASON: I'm sorry, I'm having trouble tracking your question. Could you repeat that.

>> So the employee takes advantage of the 12 weeks that the state offers them. Since we did not require them to take any of their PTO during this process, the employee has the full bucket essentially of time off available to them to use upon their return from their leave

>> JASON: That's correct. Whatever paid time off that they did not use during their time off using Paid Family and Medical Leave, they would still have full access to.

>> Okay. Thank you.

>> JASON: I mean, presuming, obviously, you know, employer policy permitting. We're not here to dictate employer policies on how PTO is accrued. Obviously consistent with state law, there are certain regulations, but as far as the use of paid time off and PFML go, we're not going to dictate to employers how to adjust their paid time off policies as it relates to Paid Family and Medical Leave

>> My question is are we allowed to have a policy that says if you're utilizing the Paid Family and Medical Leave, that you are not able to take vacation time after those benefits have been exhausted until one month later or something like that?

>> MATT: That's a great question and to be perfectly honest, that would fall outside of the purview of Paid Family and Medical Leave and Employment Security Department. That would be a question that would need to be directed to state Labor & Industries, L & I, as to whether or not that would be permitted under state sick leave laws that we don't have any, that we don't oversee.

>> This is Shannon Lawless. I know you want to move on, but I want to emphasize how important this is. Almost all employer policies that I have seen do this is they require you to use up your PTO when you're going on an extended leave of absence for a medical or family

leave purpose, so it is something the Department has to address because otherwise what's going to happen is first they're going to have a situation that's terrible for the employee and the employer where they have to have a period that they are not getting paid their full wages even though they have accrued PTO, they are waiting for PFMLA to kick in, and then it's bad for the employer when at the end of their protected leave, they still have the sick PTO bank left and they come back to work, so really it's so important for the Department to address this issue.

>> JASON: We appreciate that comment and I do want to point out that there is nothing that would prevent an employee from voluntarily using their paid time off to receive full pay while they are out on leave under Paid Family and Medical Leave. Their weekly benefit from the Department would then be prorated, as we discussed earlier, by the amount that they are receiving via paid time off, so the employee does have flexibility with regard to use of paid time off. And we certainly hear and appreciate your comment about having the PTO bank still available to the employee once they return from leave and will take that into consideration as well.

>> If I can just make a comment. This is -- there are so many different scenarios that have come up on this, the coordination of PTO and the waiting period and the pay, that some exhaustive FAQs would be really helpful on this topic and examples.

>> Agreed.

>> JASON: Thank you for that comment. We will definitely look into that.

Hearing no other comments, we'll move on to 192-620-005, minimum claim duration. Comments here in the room? Comments on the phone?

>> I just want to confirm the way this is written, for an employee who has put on -- has maybe a medically required reduced schedule, so somebody that normally works eight hours a day and under their disability, they can only work four hours a day, they will not be eligible for any benefit based on this, you know, consecutive shifts, consecutive hours concept. Am I interpreting that correctly?

>> MATT: This is Matt Buelow. Yes, you are. And it's actually a statutory provision that says that the minimum claim duration payment is for eight consecutive hours of leave, so we're just restating the statutory requirement in this rule.

>> Thank you.

>> This Sarah Bryeln, S-A-R-A-H B-R-Y-E-L-N with Claim Vantage. Is it also intended to be an increment of time that can be requested? I'm thinking, for example, of somebody who normally works ten hours a day and misses nine of those hours, or as another example, misses eight hours on Monday and then four hours on -- four hours on Thursday.

>> MATT: And to answer simply, it's yes. So the minimum duration to get Paid Family and Medical Leave in a given week is missing eight consecutive hours of work, but once that eight consecutive hours has been met, then it can be taken in smaller increments during that same week

>> Okay. Thank you.

>> JASON: Hearing no other comments, we'll move on to WAC 192-620-010, employee benefit payment request. Comments in the room? Comments on the phone?

>> Can I actually back up and ask a question on the prior WAC, the reduced schedule section?

>> JASON: Sure.

>> The question that was asked first is that if somebody is taking -- is on a reduced schedule where they're taking four hours off, that would not be considered paid family leave, but if they first take one eight-hour block and then every increment after that is four hours, they would satisfy that first eight-hour increment, so am I understanding correctly that that would then be considered payable under paid family leave as long as they take one eight-hour block first

>> MATT: As long as it is during the same week, that is true, so it's a minimum of eight consecutive hours in any given week to be eligible for Paid Family and Medical Leave, so as long as we are talking about the same week under the definition that we talked about earlier, then that is true

>> Okay. Thank you.

>> Similar to some other places where we have generated a lot of conversation, maybe additional examples or clarification in this rule would be helpful

>> MATT: Thank you.

>> JASON: Okay. Hearing no other comments, we will move on to WAC 192-620-020, weekly benefit information. Any comments in the room? And to the phone?

>> I apologize, but we feel like on the phone we didn't get a chance to comment on 192-620-010

>> JASON: Oh, okay.

>> This is Spencer Leese, L-E-E-S-E, WaferTech. I would say we're hearing somebody maybe may not have muted their phone, so if everybody can check their phones. Another thing that we wanted to ask about with this one is as far as timing for employees requesting benefits, this may require companies to retract already paid PTO, and so we need to think through how that's going to work. So when you're maybe doing some FAQs, putting something in place that makes it clear how that would work if the employer is already paid PTO and then the employee filed a claim for that time that's already been taken.

>> MATT: Okay. We'll take that under advisement. Thank you.

>> Thank you.

>> This is Sarah again from Claim Vantage. I had a question on 192-620-010. I believe that's the WAC that we're on right now, is that correct?

>> JASON: We had moved on, but we are happy to take a comment on a previous rule.

>> Okay. I apologize. So the topic is how employees request benefit payments. My question is would that weekly claim requirement also apply to voluntary plans, or could a voluntary plan be set up to have

one claim that contains several weeks?

>> JASON: A voluntary plan only needs to be as generous or more so than the state plan, so I would imagine that any scenario where the employee would be required to file less frequently in order to receive the benefit would be viewed as more generous than the state plan, so obviously we would need to review a specific application, but same or better is the general rule of thumb when it comes to voluntary plans

>> MATT: I would just add a small addition to that. I agree 100 percent with what Jason said, but I would say, and this is, you know, theoretical example, but if an employer on a voluntary plan said as an example you have to wait the entirety of your 12 weeks before you can claim and get paid for that, that would not be equivalent because it would be holding someone's money that they would otherwise be entitled to under the state plan, but just for clarification, I wanted to add that.

>> Sure. And a follow-up question to sort of bring that back to 005 that we were just talking about a moment ago. My thinking is that if an employer set up a voluntary plan and said, okay, rather than a weekly claim, we are going to do one claim for the length you're dealing with, an employee maybe that eight-hour, eight consecutive scheduled hour threshold, presumably then any intermittent or scheduled absences within that extended claim could be payable, correct? So, in other words, doing a voluntary plan sounds like it could be a way to get around that concept we were talking about ten minutes ago. Am I correct in thinking that?

>> JASON: I think, you know, we are probably not in a great position right now to determine the validity of a concept within a voluntary plan without actually reviewing an actual application that is submitted to the Department, so I hesitate to give any kind of determination on that today, but we would certainly encourage an application and any follow-up with the Department that might be necessary to determine the validity of the application we would be happy to discuss with you at that time

>> Okay. Thank you.

>> JASON: I just wanted to give folks a chance to offer any comments on a rule that we have moved past. I apologize if we moved too quickly during that last one. And so we're now back to 192-620-020. Are there any comments on this rule?

This is Daris at Unum. I just had a quick question. It looks like you removed 620-015 that was in draft 1. Is there a plan about how earnings will be deducted from weekly benefit amounts? Is there a plan to replace that or is that --

>> JASON: You're referring to the benefit calculation rule; is that correct?

>> There was in draft 1 192-620-015 how will earnings be deducted from the weekly benefit amount; it got removed from draft 2.

>> JASON: Yes, that was pulled. There may be the need to put it into a future draft. We acknowledge that there may be some additional information required around the benefit calculation. It

was pulled from this draft. But further clarity will be provided in future drafts.

>> Okay. Thank you.

>> I also have one question. This is Spencer Leese, L-E-E-S-E, WaferTech. As far as what we're asking the employee, I would assume that we're also asking them to provide the scheduled work hours; is that correct? It's not in the list of things that you ask for, but I am assuming it's in there.

>> MATT: We'll take that under advisement, Spencer. Thank you.

>> Thank you.

>> JASON: Moving on to WAC 192-620-025, conditional benefit payments. Comments in the room? Comments on the phone?

>> Jenny Haykin, Puget Sound Energy. Does this have any applicability to voluntary plans? I'm sorry, did you hear me?

>> JASON: Sorry. We did hear the question. We're discussing amongst ourselves.

>> Okay.

>> JASON: I think once the plan is submitted, we'll review it and we'll determine -- and we can discuss that off line as well -- to determine the potential applicability of this WAC to voluntary plans. You know, just kind of based on the nature of the state plan versus voluntary plans, some rules may apply and some may not, so we'll do some digging on that for you and we'll offer some clarity around that as well.

>> I would like to state that if this is going to apply to voluntary plans, having not known that when we applied and got approved for one, this may have changed our opinion about whether or not to apply. This is significant.

>> JASON: We appreciate that comment and we'll be sure to discuss that off line.

>> Thank you.

>> JASON: Moving on to 192-630-005, if there is a question regarding employee qualification for benefits. Comments in the room? And comments on the phone

>> I have a question. Margarita Contreras with Symetra.

>> JASON: Go ahead.

>> The notification period, no earlier than five days, I just want to know are we going to have access to a web portal where we can respond to these more timely because we're in an office setting and I'm sure like many other employers, mail doesn't come to us as timely as it should sometimes. We just want to make sure we're going to have adequate time to respond and access to an electronic portal would be ideal in this situation.

>> MATT: That's absolutely our plan and what we are building with our technological build right now. It doesn't exist yet, but that is currently one of the things that we're developing

>> JASON: Moving on to WAC 192-630-010, what happens if the interested party does not respond to the request for information. Comments in the room? Comments on the phone?

>> This is Jenny Haykin again with Puget Sound Energy. So it appears



that this is indefinite, that somebody could perhaps a year later provide the information to perfect their claim. Is that correct and, if so, how are employers supposed to administer that on their end if they have paid other benefits that they then need to take back or have disciplined an employee who's then getting to be protected by the law.

>> MATT: That's a great question. There are statute of limitations for how long we have to it's what's called a redetermination legally, and those provisions are outlined in the statute, so I would point you to RCW 50A.04.510 and in there are the statute of limitations. They vary based on the circumstances of the case, but there is the limitation there.

>> Could you repeat that RCW again?

>> MATT: Absolutely. 50A.04.510.

>> Thank you.

>> MATT: You're welcome.

>> JASON: Moving on to WAC 192-630-015, how will a determination be made about an employee's eligibility for benefits. Comments on this rule in the room? And comments on the phone?

>> This is Jamie Bailey with G.E. Who decides who the interested party will be?

>> JASON: We have a definition of interested parties in a previous draft of rules, which I will look up for you very quickly. So the WAC is 192-500-035. It is currently in effect so you can view that on the legislative website. And that gives you a full definition of interested parties

>> That was 192-500-035?

>> JASON: Yes, ma'am.

>> Great. Thanks.

>> JASON: Moving on to WAC 192-800-005. Fraud determination standard. Comments here in the room? And on the phone.

>> Yes, I have a comment. My name is Spencer Leese, L-E-E-S-E, WaferTech. I have a question about this one. Who is going to be -- is the employer the only entity that's going to be responsible for providing evidence to prove fraud or will the Department be making their own inquiries as far as gathering evidence?

>> MATT: Evidence to establish fraud can come from anywhere essentially. It doesn't have to come from the employer. It could come, as an example, from an anonymous tip, so anytime that the Department receives any information that there's potential fraud, we will do an investigation and then make the determination based on the individual facts of that case.

>> So the Department will actually have a person or organization that's going to be looking into cases of fraud on their own so it's not solely the responsibility of the employer who has no real financial interest in benefits one way or another?

>> MATT: That's correct. I would also add on to that that employers absolutely can provide information to the Department that we can use to look into, but it doesn't have to come from the employer.

>> Thank you.

>> JASON: Okay moving on to WAC 192-800-010. Disqualification periods and penalties. Comments here in the room? Comments on the phone?

Moving on to WAC 192-800-015. Redetermination and appeals on fraud. Comments in the room? On the phone?

Okay. That was our final WAC. I do want to give another opportunity to folks to offer comments on any rules that maybe they missed or thought of something they wanted to add. I wanted to give that opportunity to folks here in the room. And finally on the phone.

>> This is Jamie Bailey. One more comment relative to 192-610-075. The first sentence, "Employers may not require employees to take paid time off before or in place of paid family or medical leave benefits." To the extent that the Department is able to explain concurrency with employer provided such as caregiver leave, I think you may want to add someplace in that sentence concurrent with, because you have got before the leave and in place of the leave, but you don't mention concurrent with the leave.

>> JASON: We appreciate that comment, Jamie. Thank you.

Any other comments on Phase 4, draft 2? Okay. With that, we will conclude our meeting here today. Our next steps involve our two public hearings, both of which are in May. One will be here in Lacey, the other will be in Spokane. Please, as I mentioned before, head to [bit.ly/commentforum](http://bit.ly/commentforum) for information on those hearings once they become available. You can also submit additional comments that maybe were not submitted to us today on the current draft of rules and also see our full timelines of rule development and implementation.

We would also encourage you to head to our general Paid Family and Medical Leave website at [paidleave.wa.gov](http://paidleave.wa.gov). It has a lot of great information particularly for employers right now to make sure that they're in compliance with the law as of this year. We have an employer tool kit on the website which offers a tremendous amount of information for employers to make sure that they know what they need to know now that we are heading towards premium assessment and reporting.

And with that, I believe we will conclude. Thank you all so much for your participation today. I look forward to seeing you at future meetings and enjoy the rest of your week. Thank you very much.  
[End of meeting]