

REALTIME FILE

Washington Employment Security Department
Stakeholder Meeting

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>> JASON: If you did not get a chance to sign in when you came in, would you please do so at some point so we can make sure we know who is present today? That would be great. Thank you very much.

All right. So we will go ahead and get started here. My name is Jason Barrett. I am the lead Policy Analyst for paid family medical leave here in Washington. I am joined here by Matt Buelow, who is our Rules Director, and also Christina Streuli, who is our Rules Coordinator.

Could folks on the phone please mute themselves? We are hearing some crosstalk. Thank you very much.

So we are here today to discuss feedback on the current draft of phase one rulemaking for paid family medical leave. For those who might be new to the process, this is the second of two pre-102 meetings that we are holding to get feedback from the public before we file our 102 with the state. Today is actually the last chance to offer public comment before we file that 102. We also have our forum, which is -- I will give the URL for the folks who are on the phone. It is peakdemocracy.com/portals/289/forum_home. After today and up until March 13th, you can submit comments to that portal. If folks -- if you know folks who would like to provide comment but weren't able to make it today, please direct them to that site and we will take comments up until March 13th, at which point the forum will close until we file our 102.

We also have a new feature on that website, which is sort of just a general question and answer section where if you have questions about the law, questions about specific provisions of the law, how it affects you or your business, we will do our best to answer them. We have responded to every question that we have received so far, and we do prefer that method because if you have a question there is a pretty good chance somebody else has the same question as well, and this way we can see it publicly and folks who might have the same question can see our response to it.

So as I said, we are here to discuss phase one of paid family medical leave rulemaking. Phase one comprises voluntary plans, premium liability and collector bargaining agreements. We do have a court reporter in the room with us today to make sure that all of our comments are captured and transcribed, so when you do rise or speak on the phone to submit a comment, I would ask you to please state your name and any organization that you might be affiliated with so that we can be sure to capture that information, and to maybe speak just maybe a half a tick slower than you might otherwise just so that our court reporter has a chance to transcribe as best as she can. And also provide the spelling of your name if you would be so kind.

So we do have a few changes to our phase one timeline that I would like to highlight. The remainder of our timeline has changed just a bit on phase one. We are planning still to file our 102 on March 30th. We are bumping back our public hearing, our 103 filing date and the effective date of the rules just a bit, and I will explain why. We have a small business economic impact study which is

required to file with our 102. Our initial prediction for the length of that document was a bit off. We are trying to surpass the expectation that has been set by other agencies around the state. We're trying to create a more thorough document, and because the length of that document is extending the length of our overall 102, that puts us into a different bucket of timelines that the state requires us to follow for the hearing and the filing of the 103 and the effective date of the rules.

So it's for a very good reason. It's to increase transparency and to make sure that we're covering all of our bases with regard to the impact that this new law is going to have and these new rules are going to have on businesses and employees around the state. So I want to keep you apprised of that small delay.

The hearing will be -- we do still intend to file a 102 on March 30th. The public hearing on that 102 will take place on May 23rd. We will file our 103 on May 29th, and the rules will go into effect on July 1st. So that's the new timeline for the remainder of phase one.

And since we are getting kind of close to the end of phase one, we do want people to start kind of gathering their thoughts on what they would like to see out of the rules in phase two. Our phase two topics will comprise employer reporting and recordkeeping, employer and employee penalties for noncompliance, and also the small business grants that are available for small businesses who opt to pay the employer portion of premiums which they would otherwise be exempt from. There will be some grants available from the state in certain circumstances. So those are the three main topics of phase two.

We don't have a concrete timeline yet for phase two. We expect to have that finished in the next couple of days, and we will be sure to send that out to our e-mail list as well as our public engagement site as soon as that's finalized. And to make sure that you do get the most up-to-date information possible, I want to say one more time that we do have a sign-in sheet for those who are here in the room where you can let us know your e-mail address and that you would like to be added to the list, so if you have not signed that sheet yet I would ask you to please do so before you leave here this morning.

And with that, that's all the housekeeping items I have, unless either of you have anything to add, or if there are any questions about the process or timeline or kind of the overall rulemaking jamboree that we are involved in here today. Anyone on the call have any questions about that before we move to public comment?

Okay. Hearing none, we will go ahead and open it up to the floor here in the room if anybody would like to offer comments on the current draft of phase one rules. Okay. Does anyone on the phone want to kick us off? We have a shy group today. Any comments from anybody on phase one rules? This might be a very short meeting.

[Laughter]

>> Can we ask questions or is it just for comments?

>> MATT: Sure, we will take comments.

>> JASON: Use the mic so everyone on the phone can hear.

>> My name is Rebecca Andrews, and I am from Microsoft, and this sounds like a comment more than a question. As I was reading these rules, with proposed WAC 192-500-640, the criteria for benefit eligibility under voluntary plans, I just -- let me put that down there. I just wondered what, why you must have -- Microsoft's plans are very generous, and as soon as you walk in the door as a Microsoft employee you have access to maternity care and leave, and I am just wondering how that would interact with this requirement that you have to have been in employment for 820 hours, and 340 hours for us, and would we need to have two plans, or I didn't understand why that was a must if it's a voluntary plan. I was looking for some clarification on that.

~~>> JASON: Sure, that's a great question. Actually some clarity around that topic will be offered in our final draft, but basically the 840 hours of overall work and 320 hours for that employer, that's the ceiling. That basically means you have to admit an employee onto your voluntary plan once they hit that requirement. If you want to admit them on day one, by all means, please do. This just is saying that that's the requirement that they cannot be denied coverage once they hit those numbers.~~

~~>> Okay. Can you hear me? It's not -- that's not what the rule says. It says, to qualify for an employer's voluntary plan, an employee must. I need some clarification as to that.~~

~~>> JASON: We fully agree. It's already been addressed for the next rule. Thank you very much.~~

~~>> Fantastic. See Speaker Note 1 below~~

>> JASON: Anybody else? Sure, in the room.

>> CHRISTINA: Good luck.

[Laughter]

>> MATT: Hopefully it was the other one.

>> Jan, last name is Gee, G-e-e.

>> JASON: Are you with --

>> Washington Food Industry Association.

>> JASON: Thank you.

>> It's regarding -- I have to admit I didn't get to review this closely, so but I was reading the question you had on the Internet from a person that was saying if she started on leave in 20 -- let's see -- 2019, but it flowed over into 2020, would she be eligible to take it in 2020. And as I read the response from you folks it said, no, because it started in 2019. At least that's how I read it.

So I was trying to think through that, and if an employer has their own benefits, like Microsoft does, and many others, if they were on the employer plan in 2019, but wanted to then extend their leave into 2020 and they had been with that employer that 840 hours, why would they not be eligible to file for the benefits on January 1, 2020, and continue that leave?

>> JASON: I want to make sure -- I do recall the question that you are referring to, and it's possible that we may have misread the question, but we understood the question to be could they claim state benefits for leave, for the part of the leave that was taking place

in 2019. That's how -- I believe that's how we read the question. And since benefits have not yet been implemented, which begins on January 1, 2020, they would not be eligible for benefits in 2019 that had not gone into effect under the state plan.

Now if it's a voluntary plan and it's already been -- it's been approved by the state, then, you know, whatever rules about the year crossover, that's a voluntary plan an employer has, would certainly apply to that employee. Does that answer your question?

>> Yeah. I would make a suggestion that on the Q&A, and I am assuming you are going to retain the Q&A there through the whole process, that you go beyond what you see as a basic question and go beyond that and expand on it, like the scenario I presented, because I think it gives a broader view of if this or if that.

>> JASON: Sure.

>> Because I didn't quite read it the way you read it. I read it as if she was expanding into 2020, but who knows. She didn't really make that clear.

>> JASON: Sure.

>> MATT: I would just tag onto that, Jan, that there is a provision in the statute, that I don't have right in front of me, that talks about timing of the leave and that, you know, in order to be eligible for the benefits the leave must commence during a period of eligibility, but we haven't started that rulemaking yet so we don't know how that will play out or what the end result will be, but we will move into that and it will be abundantly clear.

>> Maybe on the Q&A for now you say more clarity will occur in phase whatever.

>> MATT: That's a great idea. Thank you.

>> JASON: Let me go back and edit the answer to address what you said just in the event that maybe we did misread what the asker was intending.

>> Who knows?

>> JASON: Thank you. Yeah, here in the room.

>> I am Al Audette with the Building Industry Association of Washington. A-u-d-e-t-t-e. So my question is about the ten days to provide I guess previous information from employer to employer. I am wondering how you came up with that ten days and if that -- I have asked our office, and they don't think it's too big of a problem, but for some employers to get ahold of other ones is ten days. What's going to happen if you can't get it from the employer? Are you going to have some sort of process in place for that, or is ten days pretty concrete?

>> JASON: The draft of that particular rule is just a starting point. We certainly understand that every rule is open for debate up until the closing period, so ten days just at the time, it just felt like a reasonable amount of time to balance the need of the employer having to provide the information, the previous employer, and the new one having to approve of leave request. So that was just the number that we felt was kind of threading that needle as best we could. But, you know, if you or anybody feels that that number is not workable,

we would certainly accept comment and feedback on that.

>> Okay. Thanks.

>> JASON: Anyone on the phone?

>> This is Jamie Bailey, and I have a couple questions regarding your [indiscernible]. Are you going to be requiring a separate application for each, or can an employer with multiple subsidiaries apply underneath the parent FEIN?

>> MATT: That's a great question and one that we have been being looking at internally through our business process, and, frankly, we don't know the answer to that, so stay tuned and we will communicate that.

>> Okay. So I guess the only feedback I can say is New York State, when they ruled out and implemented their paid family leave, did allow a single application with all of the FEINs attached, which made the application process much easier to do, and in line with that they require reporting at the aggregate parent level rather than at each individual FEIN. So we have many FEINs who have one employee, so we prefer to rule that out as an option.

Second question, is it going to be similar to California where the employees are going to decide whether the employer can in fact offer that plan, and once it's offered they have -- they, the employee, have the option to opt in or out, or is this going to be an employer will apply and employees will not have a say as to whether or not they can opt into this state plan?

>> MATT: It will be the latter in Washington under the statute. So if an employer applies for a voluntary plan and the Employment Security approves it, all employees working in the employ of that employer will be covered by the voluntary plan.

>> Okay. Do you folks have an idea when the applications might be available? Because my understanding is in order to offer that plan we have to have the application submitted by December 30th.

>> MATT: There is no -- we don't know the exact date, but because we know that employers will need to know answers to whether their voluntary plan is approved prior to January, because certainly we wouldn't want people withholding from paychecks unnecessarily, that's why we are doing voluntary plans in the first phase of the rulemaking. The rules should go into effect on or about July 1st, and we will -- we are currently working on developing the application, so I would think sometime during the summer that application will be available.

>> Thank you.

>> JASON: Jamie, to follow up on that, the December 30th date that you mentioned, that is not an ESD sanctioned date, so I would not rely on that information. We don't know yet what the final date will be to submit the application in order to have it in effect by January 1st, but we will certainly provide that date for you, but that information is not official yet.

>> Okay. It might be wonderful for employers to have a little leniency in this first year with respect to getting them in.

>> MATT: Absolutely.

>> JASON: We appreciate that feedback.

>> So my name is Kelly Nite, K-e-l-l-y, and N-i-t-e, and I work with a group of contractors for the federal government, and we're in the process of having those contracts rebid and processed over to possibly other entities. If those contracts are awarded to someone else in the year 2020, or late 2019, and we go with a state plan, how are premiums handled? Will our workforce that remains on their same job essentially with a different EIN still be covered under the state plan effective 1/1/20?

>> MATT: I want to ask a followup question. Your employees work for the federal government, or you are a private contractor doing business in Washington?

>> We are a private contractor for the federal government.

>> MATT: Then your employees would be covered by the law. Only employees who work directly for the federal government would be exempt.

>> I understand that. As of today the contracts are awarded to certain companies with their specific EINs. So contracts between the end of 2019 and 2020 may be awarded to other employers. What happens to the premiums that the current company pays for those employees? Will they roll forward with the employee or will they stay with that employer?

>> MATT: I understand the question. Sorry. I misunderstood it at first. The premiums that get paid into the system go into a trust fund for the payment of future benefits. There isn't a direct correlation between the amount of premiums paid for an individual and the amount of benefits they draw. So not like it goes into an account for an individual. It goes into the state trust fund which is used to pay all benefits. So the premiums would just stay in that trust fund until extended.

>> I understand that. So if one of these employees had a claim January 2nd of 2020, would they meet the eligibility period? Technically that employer has not been in the plan and has not been paying premiums, so they wouldn't have met that initial eligibility requirement with that employer. Does that make sense?

>> JASON: Were they previously employed with employers who were in the state in this scenario?

>> Yes.

>> JASON: Then they would be eligible because the qualifying period of 820 hours applies to all hours worked for any employer in the state.

>> Okay. Thanks.

>> MATT: I want to make sure that I am understanding the question. So is it your understanding because it's a federal contract that you would not be paying premiums while they are working under that contract?

>> No.

>> MATT: Okay.

>> We saw that rule quite clearly in the first draft.

>> MATT: Okay. Wanted to make sure.

>> Unless we applied for a waiver, we would be paying premiums.
>> MATT: Correct, okay.
>> Thank you.
>> JASON: Yes.
>> I want to -- Jan Gee. I know, I have the worst time. Okay. I want to -- it's been a few months since I looked at all this, but you made the statement as long as the employee worked 840 hours with any employer, that's in the plan.
>> JASON: If I said 840, I apologize, because it's 820. But, yes. If I misspoke, it's 820.
>> I don't know. Maybe I heard wrong.
>> JASON: Sure.
>> Okay. As long as they have worked 840 through qualifying, but with that employer that they are with, 120 hours, is that what you are saying?
>> MATT: There is no requirement for employer-specific time to be eligible for the benefit unless under a voluntary plan, which is the 340-hour ceiling that we talked about with Microsoft's question. There is no 120-hour requirement with an employer.
>> So we are just talking voluntary right now?
>> JASON: Right.
>> That answer you just gave.
>> JASON: Well, she was -- the question she asked was talking about general eligibility, which for the state plan, which is 820 hours worked in a qualifying period. As long as you have worked 820 hours for a Washington-based employer, there is some caveats, in the qualifying period, which is the first four of the last five quarters or the last four full quarters, 820 hours in either of those two timelines, you are eligible for the state plan. You are eligible to draw benefits and you will be granted full access to all benefits under the state plan.
>> So if I left my employer that I worked my 840 hours, and next week I start with a new employer, and then that month I apply for benefits, I am eligible?
>> JASON: Assuming the new employer is on the state plan, yes.
>> Yeah. Okay.
>> Employees would be covered under the state plan until they meet the 340?
>> JASON: I am sorry. Could you state your name for us, please?
>> This is Alex Richardson from Yakima Valley Farm Workers Clinic.
>> JASON: Great. Thank you. What's your question?
>> So the employer has a voluntary plan. Would a new employee be covered under the state plan until they meet the 340-hours requirement?
>> JASON: Yes, assuming they meet the 820-hour requirement of the state plan, they would be covered by the state plan until they are eligible for the voluntary plan.
>> Okay. And could you define the period again?
>> JASON: The qualifying period? Sure. There are two ways to meet the qualifying period. The first one is the first four of the last

five complete quarters, or the last four complete quarters. As long as the employee has 820 hours worked in either of those two timeframes, they are eligible.

>> Okay. Thank you.

>> JASON: Anybody else?

>> Yeah. This is Jamie Bailey again. I had some general questions, not from the draft rules, but from the actual chapters.

>> JASON: Okay. We will do our best to answer.

>> Yeah. Section 192-500-660, I will just read it. I think that will be easiest. Remittance of funds to Department upon termination of voluntary plans. Upon termination of a voluntary plan, the department will calculate the amount owed by the employer and send an invoice.

And I am just looking for clarification on that because my understanding would be that if you have a plan that you wouldn't be transmitting funds to the state of Washington. You would be accepting employee contributions and paying for their benefits. Could you help me understand what that was referring to?

>> MATT: Yes, happy to. Thank you for the question. What that is in reference to is under the statute, Employment Security has the authority to terminate a voluntary plan when an employer is not complying with the requirements. So in a situation where for whatever reason the employer is not following through with what it's promised when we approve it, and we terminate that plan, then the funds become property of the state so that it goes into the trust fund so that it can pay benefits of the employees when it's terminated. Hopefully that's something we never have to do, but that's what it's in reference to.

>> Okay. Thank you. Then there was another question. 50A.04.600, and this is again with reference to voluntary plans, neither an employee nor his or her employer are liable for any premiums for benefits covered by an approved voluntary plan.

Again, I am just looking for clarification because I would think that an employer would in fact be liable.

>> MATT: So the concept here is kind of twofold. One, under the state plan I think it's pretty clear. If you are on a voluntary plan, you owe no premiums to the state for the state plan. The other concept, there is nothing in the statute that prevents an employer from using a premium-based system like the state plan, but it's not a requirement. So theoretically, and I am making this up off the top of my head, please understand that, an employer could charge their employee nothing and fund the entire thing and not do it through premiums and just say, you know, we're a huge company, we have the money, we are not going to set premiums aside, we have the money available, and that would be fine. Or if they were to use a private insurance company, they are probably paying premiums, but nothing requires them to actually go through an insurance company. So it could be such a thing where it's not a premiums-based system, but the benefits are as generous or better than the state. Does that make sense?

>> An employee nor employer are liable for any premiums. Okay. This is getting at your point that you don't have to have premiums.

>> MATT: Correct, but you can.

>> But you are still liable for paying the benefits regardless of your setup?

>> MATT: Absolutely.

>> Okay. And then I had a question in the same section. The employer must offer at least one-half of the length of leave under an [indiscernible] plan, so I would think that based on other parts of the regulations that it had to be at least as generous as what was offered by the state, or more generous. And so I found that section confusing, as if to say, well, rather than offering 12 weeks of leave you could offer six.

>> JASON: So that's a great question, and we definitely received our share of questions about that particular section, and we've done our best to clarify in rule exactly what that means. I will give a quick summary here.

Basically what that means is that the employer has the option if they so choose to pay the same benefit amount that the employee would have been entitled to over the length of the leave that they wanted to take. The employer can pay that benefit amount, the dollar amount, over a period of time that is half that amount of time. It has no bearing whatsoever on the amount of leave that the employee chooses to take. The decision to offer that to the employee is in no way connected or obligates that employee to return to work any earlier than they otherwise would have. It's basically a way for the employer to offer an incentive for an employee to return early if they chose to do so. But overall the idea of the accelerated payment schedule and the amount of leave that the employee chooses to take should be treated completely separately. Does that make sense?

>> It does. I remember seeing this in [indiscernible], and I did relate it back to this statement, but if you are an employer and you choose to pay an accelerated rate, and you pay and then an employee returns to work sooner rather than later, then there would be overpayment to an employee. I paid you for four weeks but you returned after three weeks.

>> JASON: There would need to be some kind of agreement beforehand about the amount of leave and the dollar amount. Basically what we are saying, you know, we are not going to try to tell an employer on a voluntary plan and an employee how they should manage that employee's return to work. That's going to be a conversation between the employer and the employee.

What this says is that if the -- that there is basically a mechanism wherein the employer can offer the employee the same dollar amount that they would have received over the full length of leave, but that that employee will return to work sooner, and that -- you know, that agreement needs to be clear on both sides before it's implemented.

>> MATT: I would add on if an employer chooses to do that, there

would be no overpayment because the employer has chosen to accelerate those payments. And so say, for example, a person would otherwise be entitled to 12 weeks of leave and the employer and the employee agreed to pay double the amount over six weeks and for the employee to return after six weeks, and we will look at this in rule and make it more clear, but there would be no overpayment in that particular situation.

>> Oh, why can't an employee want to opt out then? If I have an option to receive my payment on the front end, and possibly return to work earlier, then it's a money-making proposition for me. I will get paid with the same frequency I would have gotten paid before. It's not offering me full pay, but because you are paying me essentially double what you would have at the accelerated rate and I come back to work, that's a win-win for the employee, isn't it? Yeah.

>> MATT: Just to be clear, there is no requirement that an employer offer the accelerated payment schedule. They are allowed to, but not required to.

>> Yeah. Okay.

>> JASON: And certainly it will be the case that an employee will choose to take a full length of leave anyway for, you know, the potential to bond with a new child or any other reason covered by the law, but this does offer a way for the employer to incentivize an early return that would not have otherwise occurred. Again, I want to clarify, underline and bold and italicize, it's not required that the employee return early. It is completely their choice.

>> And is it also the employer's choice to select the covered reasons under which it might apply? So thinking of all the employers that already offer maternity leave at six months, so anything going to be running concurrent with those leaves, and difficulty with two leaves running with different rules, so maybe carve out certainly then and maybe other reasons you offer this, or either you offer it for all covered reasons or you offer it for none?

>> MATT: You are talking about the accelerated payment schedule specifically?

>> Yes.

>> MATT: That's a great question and one that we haven't contemplated, so we will have to go back and do some thought around that.

>> Okay.

>> JASON: Do you have a preference on how you would like that rule to look, just off the top of your head?

>> Well, I like it when employers have that flexibility, so just off the cuff I would say either having to offer it all or not at all. It's a constraint, but then again if you offer it for some, it's awkward to offer for some and not others. You are going to have employees that feel that they are second in line. Why is my employer letting so-and-so leave to take care of their sick mother, but if I am out for my own health reason you are not letting me do it? So, yeah, I can't really comment. I feel like you need a lawyer for that.

>> JASON: Fair enough. We appreciate it. Thank you.

>> Yeah. And then I just had one last question, and thank you all for your patience. This relates to the voluntary plan. It's from 50A.04.025. The voluntary plan provides that an employee of an employer with a [indiscernible] plan for either family leave, or medical leave, or both, who takes leave under the [indiscernible] plan is entitled to the employment protection provisions contained in 50A.04.025 if the employee has worked for the employer for at least nine months and 965 hours during the 12 months preceding the date the leave commences.

So I was getting confused because my understanding with the state plan was if the employee can take the time off, they get paid their benefits, but they don't get the job protection until they pay their 1250 hours and one year of service. So is this saying underneath the plan those employers need to be more generous and provide job protection earlier than what the state plan would have afforded an employee?

>> MATT: Yes.

>> Okay. Thank you. That was all the questions I had.

>> MATT: Thank you for your questions and comments. We really appreciate it. Do we have any other questions in the room or on the phone, or comments?

>> JASON: Okay. Hearing none, we will go ahead and close out. Thank you all so much for joining us. Our next step is the filing of the 102 on March 30th.

Just a quick reminder that the portal closes on March 13th, so if you have any colleagues or friends who wanted to submit comments but have not yet done so, please refer them to the forum, which I will just give the URL one more time. It's peakdemocracy.com/portals/289/forum_home. That's kind of our primary public engagement site, so head over there for the latest information.

For those of you here in the room, just one final time, if you would be so kind to sign the sign-in sheet by the door as you leave, we would greatly appreciate it. Thank you all so much. Enjoy the rest of your day.

[Meeting concluded]

Speaker Note 1: The response provided here is incorrect. [RCW 50A.04.610](#) requires employees to have worked 820 total hours and 340 hours for their employer before they can be covered by a voluntary plan. We apologize for the error.