WASHINGTON STATE
EMPLOYMENT SECURITY DEPARTMENT

PAID FAMILY AND MEDICAL LEAVE
PHASE TWO: PUBLIC RULES HEARING

640 Woodland Square Loop Southeast
Lacey, Washington

October 24, 2018
9:00 a.m.

REPORTED BY: Wade J. Johnson, RPR
CCR No.: 2574
APPEARANCES

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MS. STREULI: All right. We are ready to begin.

Pursuant to the authority given under Washington State law, RCW 50A-04-215, Chapter 24.30 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 9:03 on October 24, 2018, at 640 Woodland Square Loop, in the Park Place conference room in Lacey, Washington.

This hearing is convened to consider testimony concerning Phase 2 of Paid Family and Medical Leave rulemaking. Rules in this phase, specifically, relate to employer responsibilities, small business assistance, and penalties.

Notice of this hearing was filed in the Washington State register on August 16, 2018. It was filed at WSR No. 18-17-116, it was sent to interested parties, and it was posted online.

My name, again, is Christina Streuli, and I am the rules coordinator for the Paid Family Medical Leave
division of the Washington State Employment Security
Department. I represent Commissioner Suzi LeVine as the
hearing officer presiding at this public rulemaking hearing.

To begin, I am going to ask our associate,
Jason, to direct those who are joining remotely how to access
the rules online.

MR. BARRETT: Thank you, Christina.

For those folks in the room, we do have paper
handouts of the rules for review this morning. For those
joining us by phone, I'm going to give you a web address
where you can access the draft of the rules that we are
working from today. That web address is bit.ly/commentforum.
Once again, that's bit.ly/commentforum. From that page, you
will hit the "Info" button at the top, scroll down to "Rules
Meeting," which is third from the bottom, and the first item
on that rules meeting page is the information about today's
hearing. You will see a link to a document called "Phase 2
Rules." That is the document that we are working from today:

MS. STREULI: Thank you, Jason.

To give those joining remotely a moment to
grab those rules online, I will have everybody present today
from the policy team introduce yourselves.

MR. BARRETT: Jason Barrett, lead policy
analyst, Paid Family Medical Leave.

MS. AMUNDSON: Thank you for attending today.
My name is April Amundson. I'm a policy analyst for Paid Family Medical Leave.

MS. STREULI: Thank you.

Please be advised that this hearing is being transcribed by a court reporter, and the transcript from today will become part of the official rulemaking file. To facilitate this transcription, when you testify, I ask that you please state your name, and please spell your last name before you testify.

Please also note that this hearing is convened to consider comments on the proposed rules. Because of the formal nature of this hearing, we're unlikely to be able to answer questions for you today. If you do pose a question, I will ask that you rephrase it as a comment. Questions, however, can also be sent to our online portal, which is managed by the policy team, and it can be found through the same manner that Jason, just suggested to finding the rules, you can type in a comment by going to bit.ly/commentforum. You can put questions in at any time, and we will take a look at those and respond, usually within a couple of days.

A concise explanatory statement of the agency's reasons for adopting the rules, including a summary and response to all comments received after the publication of the proposed rules will be placed in the permanent rulemaking file, as well. It will also be posted in online.
This document will be sent to interested parties who have signed up to receivePaid Family Medical Leave e-mails.

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

MS. AMUNDSON: Thank you, Christina.

The Paid Family Medical Leave Act was passed by the Washington State legislature in 2017. Premium assessments and collections begin in 2019. Benefit payments will begin in 2020. We have split the rulemaking into phases to align with this aggressive, but achievable, schedule.

This formal hearing covers the topics of employer responsibilities, small business assistance, and penalties, such as Christina had mentioned before.

Employers have various responsibilities under this law. And these responsibilities will include, at a high level, providing notice about the Paid Family Medical Leave program to any employee who has been absent for a period of time for Paid Family Medical Leave reasons; posting a general notice to the place of business to inform employees about the program's existence and the utility; making required reports to the Department; collecting and remitting premium payments to the Department; and refraining from discriminating against any employee for the use of the program.

Employers who fail to submit required reports will be given an opportunity to enter conference and
conciliation with the Department. Employers who are found to have discriminated against an employee due to Paid Family Medical Leave are subject to damages. Small business assistance grants are available to employers with 150 or fewer employees who have an employee take leave under this program to help diminish the cost of employee being away from work.

The draft rules are intended to interpret and clarify the law. In addition, these draft rules also contain several definitions that will pertain to all Paid Family Medical Leave rules, a bit more information about the voluntary plan administration, and rule governance statement.

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

Thank you for being here.

MS. STREULI: Thank you, April. We are ready to accept testimony from those in attendance. To keep us organized and to avoid talking over each other, I'm going to open the floor for testimony from those who are physically in the room today first. And when we have exhausted comments from those in the room, we'll turn to the phone. We're only doing that to keep things orderly, so we're not talking over each other.

Please remember that, when you testify, please
speak directly into the microphone. If you're in the room, you have to get kind of close to it. Please state your full name, please spell your last name, and, if you are here in a representative capacity, if you could tell us who you represent.

We are ready to accept public comments from those physically in the room.

MR. BAHR: Good morning. I'm Logan Bahr, with the Association of Washington Cities. Just one comment on --

MR. BARRETT: I'm sorry, is that B-a-r-r?

MR. BAHR: Sorry, I did not spell that. I am not following the rules. That is B-a-h-r.

So the comment that we have relates to the definition section of Phase 2. So that's 192-500-010. We were interested in having a definition of "employee," as well as "employer." Cities have elected officials. We also have a number of appointed, unpaid positions, and they may receive some type of per diem or some type of value transfer, et al. And while we've received some indication from the Agency, that elected officials fall under the definition of employee, many of our elected officials are unpaid. And so we are very interested in getting to the bottom of what is an employee, who qualifies under PFML, and who we should be paying premium for.

So, with that, I will cede the rest of my
time.

Thanks.

MS. STREULI: Thank you for that comment about the desire to have a definition of employee in the definition section.

MR. KING: Diabetes does terrible things to the eyesight. I'm Jim King, K-i-n-g, with Independent Business Association. Again, our concerns -- and I believe Gary Smith has been in touch with you and has sent some proposed language, but he wanted to make the record today -- involve mostly around definition, especially around definition of "self-employed" and "independent contractor." We want to be sure, with all the work Gary has put in on this over the last few years, and I've been able to duck most of it and deal with other stuff -- but we want to make sure this thing works, and anything we can do to help clear up any possible confusion.

The recognition that independent contractors are exempt, whether or not self-employed and independent contractor are the same thing, I think there's some differences, and it would help for clarification on that.

There is no mechanism in the rules for the self-employed or independent contractor to notify the Department they are exempt or to opt in, and that may be need to be addressed.
And there's no mechanism in the rules for collecting premiums from the self-employed person or independent contractor who does opt in and does not meet the three-year requirement.

And so those are areas that we think still need to be addressed. Like I say, specific language, Gary has sent to you. I just wanted to be on the record this morning.

MS. STREULI: Thank you very much for coming.

And for those who don't know, what Mr. King is referencing is that comments can be submitted in writing to us. You don't have to testify at today's hearing in order to be heard. I'll say this again near the end, but, to cover it now, the deadline for submission of written comments is 5:00 p.m. on October 29, 2018. You can submit written comments online, again, by entering bit.ly/commentforum into your browser. Comments must be received by that deadline of October 29 at 5:00 p.m. in order to be considered part of the rulemaking, but please feel free to send them.

And thank you for your comment.

Other comments from those in the room today?

If there is no further testimony concerning the proposed rulemaking before us from anyone in the room, I'd like to open the phone and ask if anyone who is joining us remotely would like to testify.
We are now open for testimony from those joining us remotely by phone.

Is there anyone joining of us by phone that would like to testify today on Phase 2 of the Paid Family Medical Leave rulemaking?

MS. WATKINS: This is Marilyn Watkins of the Economic Opportunity Institute, and I just wanted to publicly commend the Department for your careful and open process that you've been following in this rulemaking. I know that the Department is working very hard, and I just wanted to express our appreciation for the process that you're following.

MS. STREULI: Thank you. That means a lot.

I'm going to hold the comment forum open just for a few seconds here to allow anyone either in person or on the phone who would like to testify to have an opportunity to do so. Please do so now if you would like to get your comment on the record.

For anyone joining us by phone today, we are accepting testimony and comments from all who are in attendance. Please feel free to testify if you would like to do so.

Last call for anyone who would like to testify.

MS. HAMMACK: Hello.

MS. STREULI: Yes. Go ahead. Thank you very
much.

MS. HAMMACK: This is Crista Hammack, H-a-m-m-a-c-k, with WaferTech. And we have a comment about the Phase 2 rulemaking 50A.04.070, "Employee notice of rights." It says, "Whenever an employee of an employer who is qualified for benefits under this chapter is absent from work to provide family leave or take medical leave for more than seven consecutive days." Can we ask clarification on calendar or workdays within that section.

MS. STREULI: Thank you very much. Just to confirm, the question was about the term "calendar days" in 50A.04.070?

MS. HAMMACK: That's correct.

MS. STREULI: Thank you very much. I'll take down the comment that there's some confusion and ambiguity in that statement.

MS. HAMMACK: Thank you.

MS. STREULI: Thank you.

All right. Is there any other comment, from anyone on the phone or in person, who would like to testify on today's rules?

Okay.

I'd like to honor everyone's time that joined us today, and, if there are no further comments, we are able to end.
So, in conclusion, this hearing was convened to consider testimony on Phase 2 of Paid Family and Medical Leave rulemaking related to employer responsibilities, small business assistance, and penalties. All oral testimony presented at this hearing and written submission will become part of the official record and the final rulemaking file.

The deadline for submission of written comments is October 29 at 5:00 p.m. You can submit written comments online by entering bit.ly/commentforum, and "comment forum" is all one word. You can enter that into your browser. Comments must be received by 5:00 p.m. on October 29 to be part of this rulemaking.

A final decision regarding adoption of the proposed rules will be made after all testimony and all written comments have been fully reviewed and considered. We have a target date of November 2, 2018.

If there are no further comments, then, on behalf of Commissioner Suzi LeVine, we thank you for participating in this hearing.

The hearing is adjourned at 9:21 on October 24, 2018.

Thank you all for attending.

(Hearing concluded at 9:21 a.m.)
CERTIFICATE

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify: That the foregoing verbatim report of proceedings of the witness named herein was taken stenographically before me and reduced to a typed format under my direction;

That I am not a relative or employee of any attorney or counsel or participant and that I am not financially or otherwise interested in the action or the outcome herein;

That the verbatim report of proceedings, as transcribed, is a full, true and correct transcript of the testimony and said transcript was prepared pursuant to the Washington Administrative Code 308-14-135 preparation guidelines.

Wade J. Johnson

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