

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

October 24, 2018

A P P E A R A N C E S

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1 LACEY, WASHINGTON; WEDNESDAY, OCTOBER 24, 2018

2 9:01 A.M.

3 --oOo--

4  
5 MS. STREULI: All right. We are ready to  
6 begin.

7 Pursuant to the authority given under  
8 Washington State law, RCW 50A-04-215, Chapter 24.30 RCW of  
9 the Open Public Meetings Act, and Chapter 34.05 of the  
10 Administrative Procedures Act, this hearing is hereby  
11 convened.

12 For the record, this hearing is beginning at  
13 9:03 on October 24, 2018, at 640 Woodland Square Loop, in the  
14 Park Place conference room in Lacey, Washington.

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

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

24 My name, again, is Christina Streuli, and I am  
25 the rules coordinator for the Paid Family Medical Leave

1 division of the Washington State Employment Security  
2 Department. I represent Commissioner Suzi LeVine as the  
3 hearing officer presiding at this public rulemaking hearing.

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

7 MR. BARRETT: Thank you, Christina.

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

19 MS. STREULI: Thank you, Jason.

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

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

25 MS. AMUNDSON: Thank you for attending today.

1 My name is April Amundson. I'm a policy  
2 analyst for Paid Family Medical Leave.

3 MS. STREULI: Thank you.

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

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

21 **A concise explanatory statement of the**  
22 **agency's reasons for adopting the rules, including a summary**  
23 **and response to all comments received after the publication**  
24 **of the proposed rules will be placed in the permanent**  
25 **rulemaking file, as well. It will also be posted in online.**

1 This document will be sent to interested parties who have  
2 signed up to receive Paid Family Medical Leave e-mails.

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

5 MS. AMUNDSON: Thank you, Christina.

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

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

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

24 Employers who fail to submit required reports  
25 will be given an opportunity to enter conference and

1 conciliation with the Department. Employers who are found to  
2 have discriminated against an employee due to Paid Family  
3 Medical Leave are subject to damages. Small business  
4 assistance grants are available to employers with 150 or  
5 fewer employees who have an employee take leave under this  
6 program to help diminish the cost of employee being away from  
7 work.

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

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

16 Thank you for being here.

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

25 Please remember that, when you testify, please

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

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

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

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

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

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

25 So, with that, I will cede the rest of my



1 time.

2 Thanks.

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

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

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

22 There is no mechanism in the rules for the  
23 self-employed or independent contractor to notify the  
24 Department they are exempt or to opt in, and that may be need  
25 to be addressed.

1 And there's no mechanism in the rules for  
2 collecting premiums from the self-employed person or  
3 independent contractor who does opt in and does not meet the  
4 three-year requirement.

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

9 MS. STREULI: Thank you very much for coming.

10 And for those who don't know, what Mr. King is  
11 referencing is that comments can be submitted in writing to  
12 us. You don't have to testify at today's hearing in order to  
13 be heard. I'll say this again near the end, but, to cover it  
14 now, the deadline for submission of written comments is  
15 5:00 p.m. on October 29, 2018. You can submit written  
16 comments online, again, by entering [bit.ly/commentforum](https://bit.ly/commentforum) into  
17 your browser. Comments must be received by that deadline of  
18 October 29 at 5:00 p.m. in order to be considered part of the  
19 rulemaking, but please feel free to send them.

20 And thank you for your comment.

21 Other comments from those in the room today?

22 If there is no further testimony concerning  
23 the proposed rulemaking before us from anyone in the room,  
24 I'd like to open the phone and ask if anyone who is joining  
25 us remotely would like to testify.

1                   We are now open for testimony from those  
2                   joining us remotely by phone.

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

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

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

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

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

22                  Last call for anyone who would like to  
23                  testify.

24                  MS. HAMMACK: Hello.

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

1 much.

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

10 MS. STREULI: Thank you very much. Just to  
11 confirm, the question was about the term "calendar days" in  
12 50A.04.070?

13 MS. HAMMACK: That's correct.

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

17 MS. HAMMACK: Thank you.

18 MS. STREULI: Thank you.

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

22 Okay.

23 I'd like to honor everyone's time that joined  
24 us today, and, if there are no further comments, we are able  
25 to end.

1                   So, in conclusion, this hearing was convened  
2     to consider testimony on Phase 2 of Paid Family and Medical  
3     Leave rulemaking related to employer responsibilities, small  
4     business assistance, and penalties. All oral testimony  
5     presented at this hearing and written submission will become  
6     part of the official record and the final rulemaking file.

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

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

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

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

22                  Thank you all for attending.

23                  (Hearing concluded at 9:21 a.m.)  
24  
25

C E R T I F I C A T E

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, Certified Court Reporter 2574 for the State of Washington residing at Seattle, Washington.  
My CCR certification expires on 09/18/19.

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