PUBLIC COMMENTS HEARING

Tuesday, November 12, 2019
9:05 a.m. – 10:03 a.m.
322 North Spokane Falls Court
Spokane, Washington
APPEARANCES:

FOR THE EMPLOYMENT SECURITY DEPARTMENT:

MS. BRITTANY MCVICAR
MS. APRIL AMUNDSON
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MS. MCVICAR: Pursuant to the authority given under Washington State Law RCW 50.A.05.060, Chapter 42.30 RCW of the Open Public Meetings Act and Chapter 34.05 of the Administrative Procedures Act, this hearing is hereby convened.

For the record, this hearing is beginning at 9:05 a.m. on November 12, 2019, at the DoubleTree by Hilton Spokane City Center at 322 North Spokane Falls Court in Spokane, Washington. This hearing is convened to consider testimony concerning Phase 6 of the Paid Family and Medical Leave rulemaking. Rules in this phase are related to appeals, typical work week hours, intermittent leave, implementing legislative changes and other topics related to establishing the program. Notice of the hearing was filed with the Washington State Register on September 5th, 2019, as number WSR 19-19-005. It was sent to the interested parties and it was posted online.

My name is Brittany McVicar and I'm a policy analyst for the Paid Family and Medical Leave Division of the Washington State Employment Security Department. I represent Commissioner Suzi LeVine as the hearing officer presiding at this public rulemaking hearing. There is staff from the Paid
Family and Medical Leave Policy team attending this hearing. Please introduce yourself.

MS. AMUNDSO N: Thank you for being here today. My name is April Amundson. I'm the Policy and Rules Manager for Paid Family and Medical Leave.

MS. MCVICAR: Please be advised that this hearing is being transcribed by a court reporter and the transcript will become part of the official rulemaking file. To facilitate this transcription, please state and then spell your name each time before you provide testimony. Please also note that this hearing is convened to consider comments on proposed rules. Because of the formal nature of this hearing we are unlikely to answer any questions that you may ask. If you do pose a question, I will ask you to rephrase your question as a comment. Questions can be sent to our online portal, which is managed by the policy team. It can be found by typing bit.ly/commentforum, and that's all one word, into your browser window.

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

We will begin with April Amundson who will provide a brief explanation about our proposal.

MS. AMUNDSON: Thank you, Brittany.

The Paid Family and Medical Leave Act was passed by the Washington State Legislature in 2017. January 1, 2019, employers started assessing premiums on employee wages. Application for benefits will begin to be accepted in January of 2020. We have split the rulemaking into phases to align with this aggressive, but achievable, schedule. And this formal public hearing covers the topics of appeals, typical work week hours, intermittent leave, the implementation of changes related to the 2019 legislative session as well as other rules that Brittany has stated a moment ago. More specifically, these rules address how self-employed individuals interact with the program, premium overpayments, how typical work week hours are determined for benefits, employee notice requirement waivers, child support deductions, the weekly benefit calculation and proration of benefits, provide clarity around the voluntary plans, small business assistance grants, as
well as other topics.

In addition, these draft rules contain several new and updated definitions that will pertain to all Paid Family and Medical Leave rules. I encourage you all to read the text of the rules for a more robust understanding, and these draft rules are intended to interpret and clarify the Title 58 of the Revised Code of Washington.

We really do appreciate your interest and attendance to these meetings and we appreciate your participation in our rulemaking efforts to implement this important program. We look forward to hearing your comments. Thank you very much.

MS. MCVICAR: Thank you, April. We will now hear testimony from those in attendance. To avoid talking over each other, we will first take testimony from those in the room. We will then open the phone for comment once there is no more comment from those in the room. Again, when you testify, please speak into the microphone, state and spell your name and state who you represent if you are here in a representative capacity.

We are now ready to accept public comment from this in the room. Is there anyone wishing to provide comment?

I did come prepared with questions, but in the spirit of jeopardy, I'll rephrase it as a comment instead of a question, I guess, or reverse jeopardy here.

One of the issues that I have been working with employers in our membership organization to work through or to understand better and has become a real concern for employers, particularly with what was an addition to the statute that didn't exist initially regarding the provision of health insurance benefits for employees that are on Washington State Paid Leave Benefits that did not exist in the original version of the statute and it was not part of the Washington Family Medical Leave Act as it currently exists. So there was always an incentive for employees who were otherwise qualified FMLA under federal law to be, I guess, applying for and utilizing FMLA benefits concurrent with whatever state benefit they might be receiving.

Now with the addition of and the requirement that the employer continue to provide health insurance
benefits for employees who will be receiving Paid Family Leave benefits through the state program, employers are very concerned about employees now running FMLA and Washington State paid leave benefits in an end-to-end fashion as opposed to concurrently because there is no incentive for them to be utilizing both benefits at the same time. Even though the federal government and the Department of Justice issued a letter opinion some months ago which stated employers who are FMLA employers, and if you have an employee who as an FMLA qualifying event, there is no option but to start and to run FMLA with that employee, otherwise qualified for. The employee doesn't have any option saying, yes, I want FLMA or I don't. Nor does the employer have an option of saying you don't have to use it if you don't want to, you can because you're qualified for it. The Department of Justice issued a letter stating that employers were required to utilize FMLA. Except, unfortunately, in the 9th Circuit where our Washington employers sit, there is a difference of opinion with respect to that and it has been found to be actually an FMLA interference claim for an employer to require an employee to utilize FMLA even though they haven't had a qualifying event and if the employee doesn't want
to. So, what we are really facing here in the state of Washington now for employers is the real potential for employers to have employees that are out of the workplace for 24 weeks as opposed to, you know, the intended 12 to 14 to 16 to 18, depending on what whatever their condition is because there is no incentive for an employee to use one or the other or use these benefits concurrently FMLA. Because FMLA doesn't provide any additional protection that the state benefit now don't provide. And my understanding from the state is that they are not going to be considering whether somebody has already been out on FMLA prior to coming to the State to apply for paid leave benefits so the employee very well has been out on FMLA protected leave for 12 weeks, they decide they aren't ready to come back or they can't come back or whatever the issue is and now they are just simply going to go to the State and apply for another 12 to 14 to 16 weeks of benefits, depending on what their condition is and receive paid leave benefits and the employer will have to continue to provide job protection and health insurance benefits for that employee. And that is going to be a real, real burden for even employers who have 50 employees. That's an issue for employers and I think it's an unfortunate,
probably unintended, possibly, side effect of the wording and the regulations as they now exist with the addition now of paid leave benefits.

The other issues that I see is, is there -- and this is not a comment, but it is a question that will remain -- I'm not expecting an answer to this, but I'm throwing this out there, about how employers will go about collecting any portion of employee's premium that might be due and owing with respect to those health insurance benefits. The FMLA regulations do address specifically what an employer's options are with respect to an employee who has failed to pay their portion of the health insurance premium and outlined the notification procedure for employers to notify an employee that their benefits are at risk because they haven't paid their portion of the premium. Of course if the employee is simultaneously utilizing a paid leave benefit provided to them by the employer, for example, paid PTO or vacation or something, the employer does have an income stream from which they can deduct that premium. Under the Paid Leave Benefit Program in the state of Washington, if an employee is not opting to take supplemental benefits so where the employer is offering to allow the employee to make up that wage gap by utilizing
their sick leave or whatever, the employer does not have an option to tap into the income stream that the employee is receiving from the State in order to cover a premium benefit payment that the employer might be due and owing. So, I think it would be helpful to have something addressed possibly in the rules about what the employer's options are, much like the FMLA regulations outlined, what the employer's options are. If an employee is out on State-paid leave and has failed to pay their portion of the premium how the employer can go about either collecting that or addressing it or terminating the employee's benefits if they fail to make a payment. Thank you very much.

MS. MCVICAR: And thank you. And I want to make sure I captured your comments so I'm just going to paraphrase just to make sure.

So, your concern dealt with the concurrency issues of FMLA in our law as well as the continuation of not just job protection, but also the health benefits. So, you know, looking for guidance or maybe some more clarity for addressing those concerns.

And then, in addition, also for when those employees are out on leave what are the options or what's the guidance for employers when those healthcare premiums that the employee is responsible
for and they are not paying, what are the options that
the employers have for that? Did I capture that
right?

MS. HAYES: Yes.

MS. MCVICAR: Is there anyone else in the
room wishing to provide comment on our Phase 6 Rules
today?

MS. BAILEY: My name is Stephanie Bailey.
I'm a Human Resources Director for the Upper Columbia
Conference. My concern is with the rules in regards
to look backs for starting in 2020. With an employee
that has already exhausted state and federal leave as
it is now going into January 2020, they'll have access
to, under my understanding, another 12 weeks. And if
they've already gone on a pregnancy leave or something
like that, they may have already taken 12-plus weeks
as it is in Washington State and then they may be
eligible for another 12 weeks. So, that's a concern
for me that you could have somebody out for 24-plus
weeks. Especially if this is an educational role, the
concern for the students and the consistency of the
program.

MS. MCVICAR: Thank you for your comments.

Just to make sure I've captured it correctly, your
concerns were about again that potentially using other
programs, federal and state. And then as of January 1 they are equal to, you know, look into our program and depending on their qualifying period and, you know, these serious health conditions and what have you, their typical work weeks will be established and that could be in addition to any other leave. So, again, just more of that continuation of leave; is that accurate?

MS. BAILEY: Correct.

MS. MCVICAR: Is there anyone else in the room wishing to provide comments on our Phase 6 Rules? Seeing no more comments in the room, we will turn it to those on the phone. Thank you again for joining us. Is there anyone on the phone wishing to provide comments on our Phase 6 rulemaking?

This is Daris Freeman. My comments revolve around primarily the voluntary plan --

MS. MCVICAR: Daris, I'm so sorry. Can I get you to spell your name?

MS. FREEMAN: There is still a lot of unknowns regarding how employers or their carriers will access employee eligibility data, as well as any time already taken under the state plan. In addition, there has been no clarification or guidance provided as to what, how, or where employers will be reporting
the approved voluntary planned time that's been paid. It just says that they must report weekly benefit and leave duration information. But there has been no guidance as to how often or how that will be transmitted as well.

MS. MCVICAR: Daris, thank you so much. Could I get you to spell your name for our transcriber, please?

MS. FREEMAN: Sure. First name is Daris, D-A-R-I-S, last name is Freeman, F-R-E-E-M-A-N.

MS. MCVICAR: Thank you so much. And, again, just to make sure I captured your comments, your concerns are around the voluntary plans for employers and how those employers are going to access what the State would be providing so that they can make sure that they are in compliance with the law. And in addition to that, when voluntary plans start providing those benefits, you're looking for maybe some guidance for those employers on how that process will look; is that accurate?

MS. FREEMAN: Correct.

MS. MCVICAR: Thank you so much.

MS. FREEMAN: Sure. Sorry, I'll just keep going and then somebody else can jump in. I think there is still a need for clarification on how the
waiting period interacts with the maximum entitlement. There has been some conflicting guidance issues on that. Basics does have the proposed right on maximum amount of paid benefits, but whether -- again, it's still unclear how that interacts with the waiting period based on the guidance received to-date. So I would recommend some clarity there.

MS. MCVICAR: Absolutely. So, again, just to reiterate, looking for clarification on the employees who need to serve a waiting week and how that interacts with the maximum amount of the, you know, the new rule that is used times their typical work week to find that maximum.

MS. FREEMAN: Yes. How those interact.


MS. FREEMAN: Because that goes back to voluntary plans. With employer's with voluntary plans, they need to understand how much is a 12-week benefit. Is it 12 weeks of pay plus an unpaid waiting period or is it 12 weeks of leave?

And then lastly, I would just like to confirm what was stated in the room earlier regarding the whole benefit continuation issue. I think, again, that came under the privacy rules or some other place that there was a continuation of benefits. I think
they expressed the issues very well, but I do think the proposed right contradicts the statutes. Those definitely would ask that that be looked at and would confirm whoever that was in the room it should be specific to what FLMA is requiring benefits and is consistent with the unpaid law that has always existed in Washington as well as undue costs to employers.

MS. MCVICAR: Thank you for that comment. Again, just reiterating, the benefit clarification of how PFML will interact with other programs, state and federal.

MS. FREEMAN: Well, specifically, what the requirements are going to be for continuation of health benefits and the interaction with the federal because that's where I think we have some -- the statue appeared clear and now there is a proposed writing that seems to contradict that.

MS. MCVICAR: Thank you for that clarification.

Is there anyone else on the phone wishing to provide comment on our Phase 6 rulemaking?

MS. WILSON: This is Maggie Wilson with LOVA, spelled L-O-V-A.

We would like to make a comment on WAC 92-610-050, How are typical workweek hours determined.
We just wanted to comment that the WAC does not clarify the voluntary plans options for alternative calculations of typical workweek. We were told by customer care center that voluntary plans does not have to be 40 hours for salaried individuals and that we can use the actual hours worked. So, for example, if an individual works 37.5 hours you could use that in place of 40 hours.

MS. MCVICAR: Okay. So, regarding 610-050 you are looking for clarification on the rules the voluntary plans have of establishing what is considered full time and then how this WAC would either conflict or what it would require of those voluntary plans; is that correct?

MS. WILSON: Correct.

MS. MCVICAR: Thank you for your comment. Others on the phone wishing to make comment on our Phase 6 rulemaking?

MR. DULGERIAN: This is Tony Dulgerian, with MetLife. Dulgerian, spelled D, as in David, U-L-G-E-R-I-A-N, as in Nancy. And my comment involves WAC 192-500-120. And I was looking for some guidance as to whether employers with voluntary plans can deny fraudulent claims. And, if so, what is the standard for a fraudulent claim in the voluntary plan context
and whether employees have the right to appeal such determinations?

MS. MCVICAR: Could I get you to restate that? I want to make sure I'm following the right proposed rule. You said WAC 192-500-120?

MR. DULGERIAN: Yes. That was the provision regarding employee fraud.

MS. MCVICAR: Okay. Would you mind restating your comment, please?

MR. DULGERIAN: Sure. So, in the voluntary plan context, if an employer with a voluntary plan denied a fraudulent claim by the employee for benefits. And so --

MCVICAR: So --

MS. DULGERIAN: So, what standards apply and when their employees can appeal such determinations and how.

MS. MCVICAR: Thank you again for restating that. So, you were looking for when -- you know, what rules do voluntary plans need to understand is applicable to their voluntary plan and then how does that person look for guidance specifically onto employer fraud?

MR. DULGERIAN: Yes.

MS. MCVICAR: Thank you so much.
MR. DULGERIAN: I have a few more comments.

Should I --

MS. MCVICAR: Oh, yes, of course.

MR. DULGERIAN: Let's see here. This comment about WAC 192-510-030.

MS. MCVICAR: Okay.

MR. DULGERIAN: When determining whether employees work enough hours to be eligible for benefits. Will the ESD be considering paid time off or any unpaid leaves of absence as far as the hours worked? I need some guidance on that.

MS. MCVICAR: And I want to make sure I'm tracking this to the right rule. You said 510-030, which is the proposed rule on how the department will determine wages and hours for self-employed persons electing coverage?

MR. DULGERIAN: I think I stated the wrong rule. My apologies.

MS. MCVICAR: Yeah, I just want to make sure I'm tracking.

MR. DULGERIAN: Let me find the right one. One moment. I can't pull it out right now, but can I just submit that as a general comment?

MS. MCVICAR: Absolutely. So, I want to make sure. You are speaking to when PTO or other paid
time off counts towards wages; was that accurate?

MR. DULGERIAN: Counts towards hours worked.

MS. MCVICAR: Counts for hours worked.

Okay.

MR. DULGERIAN: Or hours of employment.

MS. FREEMAN: Is that for purposes of the reinstatement job restoration provision?

MR. DULGERIAN: It's for the purposes of the eligibility determinations.

MS. MCVICAR: Thank you. For the person who just offered a clarification, could I get you to state and spell your name, please?

MS. FREEMAN: This is Daris Freeman. I think that's another -- while we're on that topic, it may be a different standard for the job restoration rights of the 1250 from the original Washington unpaid FML that it may be for eligibility. So, clarification on those two things, specifically, would be extremely helpful.

MS. MCVICAR: Thank you, Daris. So, again, I just want to make sure I captured the comment. So we are looking for a clarification from the department specifically on hours reported. And then also kind of tied to that, what hours then would go towards that 1250 count for qualifying for job restoration.
MS. FREEMAN: At least from my part.

MS. MCVICAR: Any further comments from either of you before I invite others?

MR. DULGERIAN: Not right now. Thank you.

MS. MCVICAR: All right. Is there anyone else on the phone wishing to provide comment on Phase 6 rulemaking?

MS. MUELLER: This is Renee Mueller from the City of Bellingham.

MS. MCVICAR: Yes, Renee. Could I ask you to possibly speak a little louder? It's a little difficult to hear you.

MS. MUELLER: This is Renee Mueller from the City of Bellingham. My name is spelled R-E-N-E-E, last name is M-U-E-L-L-E-R. I'm in Human Resources at the City of Bellingham. Can you hear me okay?

MS. MCVICAR: Yes, I can. Thank you so much.

MS. MUELLER: Okay. I have some comments or considerations around the language personal supplemental benefits, which is WAC 192-500-180. So some of my comments are about considerations with the health supplemental benefits are included and they are a mandatory subject of bargaining for anyone who has collective bargaining agreements. And although an
employer is not offering supplemental benefits due to
the default, and I understand that, many employers are
not simply choosing to not offer those supplemental
benefits without bargaining which effects all those
labor groups.

Also, if the supplemental benefits aren't
allowed by the statute, the city would have to, as
most employers I'm assuming, would have to set up
multiple supplemental leave codes for each, at least
for us, for each of our bargaining groups. Which
would really constitute a tremendous additional
administrative reporting.

The other thing that seems to be a big
burden for us would be the timing of the eligibility
and benefit payment amounts. It would make it
difficult for us as employers to coordinate how much
supplemental leave to quote/unquote "top up" so that
there really is no loss of income, you know, for the
employee, which I'm assuming because of the lag in
time would result in a lot of (inaudible) on our end
as an employer. What we would like to propose for
consideration is to allow the employees to top up
without penalties and/or could change the reporting
requirements of the employer involving the dollars and
the hours being used by the employee as part of the
total current paid family leave premiums that we would be paid to the state. So, don't take that away, just allow the employer to go ahead and add that in as hours towards your total hours that you can use towards the PFML and/or the dollars would be included to allow the money or premium to be used for dollars for supplemental payments. That's it.

MS. MCVICAR: Thank you so much for providing your comments. I want to make sure I captured this. I've may have missed the last point you were making so I want to make sure I captured it. So, we're talking about supplemental benefits and though, you know, the permissive language in statute allows employers to do this, it can be an administrative burden for those choosing to offer those benefits. Additionally, you're looking for maybe some guidance from the department on how employers are going to know the amounts to be able to top off or to offer those supplemental benefits to kind of make that employee whole. And, Renee, what I didn't capture is the last comments you were making. I want it make sure I understood the reporting comments. What I heard was there were maybe concerns about what the employer needs to report in regards to supplemental benefits. Was that -- am I capturing
that?

MS. MUELLER: Right. There is a concern and the concern really has to do with the current language which states that if you use a supplemental benefit, if you designate something as a supplemental benefit, and let's say it's sick time, that sick time that we allow to top up so that the employee is whole for the PFML, would the dollars would not count towards dollars for gross pay that we currently calculate the .4 percent and the hours would also not be reportable to ESD as hours towards your, you know, next four out of five quarters to count towards eligibility. Which would really mean a whole separate set of lead codes that we would have to institute for all our employees because some pay would go towards gross pay, which everything goes towards gross pay, and these particular codes would not go towards gross pay or reportable hours to the ESD. So, that's just for consideration of -- it really would be easier to allow to top up, but to allow those hours in dollars to just count and not to not count as they are currently now proposed in the rule.

MS. MCVICAR: Thank you so much for clarifying that.

MS. MUELLER: Thank you.
MS. MCVICAR: Is there anyone else joining us on the phone that would wish to provide comments on our Phase 6 rulemaking?

MS. WINDOWS: Yes. This is Stacey Windows.

MS. MCVICAR: I'm sorry. Could you restate your name, please?

MS. WINDOWS: Stacy Windows.

MS. MCVICAR: And would you spell that for us too, please?

MS. WINDOWS: W-I-N-D-O-W-S.

MS. MCVICAR: Thank you.

MS. WINDOWS: And I want to get back on what she was just commenting on about the supplemental pay and also pairs with the gentleman who spoke about the wages that are paid through another paid time off or a sick day that was not part of a leave and those would actually be in the reportable wages called premiums and so that was a question on whether we have to pay the premiums for those but does that also count as the 820 hours benefit. The thought is could we negate around the whole supplementing and reporting the wages that we're now having to duplicate all of their pay codes. If the state of Washington would consider anything that is paid through a paid time off, which are hours actually not worked, as being removed from
reportable wages?

MS. MCVICAR: So kind of going along with the previous comments, you're looking for just some guidance or avenues regarding supplemental pay when it comes to not only tracking, but also what wages would be premiums be owed?

MS. WINDOWS: Correct. So my thought is if the state may modify the regulations to say that paid time off is not considered reportable wages because they're not actually hours worked, then that helps solve our issue around the supplemental wage pay by having to determine if it's a supplement then I'm not supposed to report it to the state or is it PTO because they are on vacation then I have to report it to the state. It's an administrative burden because now we have to have duplicate pay codes for all of those plans.

MS. MCVICAR: Thank you for providing that clarification. I appreciate it. Are there any further comments from those on the phone regarding Phase 6 rulemaking? Are there any further comments for those joining us by phone on Phase 6 rulemaking?

MS. WINDOWS: This is Stacey Windows again. During this case for the initial application I'm not sure of which piece of the rulemaking it speaks to the
retro claim. It would be nice to receive clarification on how far the ESD will allow an applicant to retroactively submit a claim.

MS. MCVICAR: Are you speaking to backdating of claims?

MS. WINDOWS: Yes.

MS. MCVICAR: So, you're looking for a clarification on when an employee has a qualifying event that would allow that person to backdate a claim?

MS. WINDOWS: If there are limitations. I think I need a clarification to have a regulation of the state, if it's 30 days or 60 days or --

MS. MCVICAR: Okay. So, in addition to whether or not a serious health condition qualifies, you're looking to see if there is more limitations that would apply to that?

MS. WINDOWS: There is more clarification and guidance so that, for example, if an employee will be permitted to go back six months, what are the limitations from the qualifying event?

MS. MCVICAR: Okay. Thank you.

Are there any further comments from those on the phone on Phase 6 rulemaking?

MS. LOVA: This is Maggie Lova with...
Sedgwick, last name L-O-V-A.

We would like to comment on what the state is clarifying that those individuals who began a leave on 2019 and transition into '20 will be eligible to file the Washington FML benefits. We would like some clarity from the department around how this will affect existing Washington FLA claims for those individuals who do not apply for Washington Schedule on 1/1. Because they said that Washington FLA will sunset on 12/31/19. So, will the existing Washington FLA approval for these claims that began in 2019 and that transitioned into 2020 continues, will that be before it runs out or will those claims have to be closed out since Washington FLA sunsets on 12/31/19? And will employees be required to file for Washington PFML on 1/1/20 if they want to continue on leave?

MS. MCVICAR: Thank you for that comment.

So, again, you're looking for understanding of L & I's program of FLA and that that will sunset in December. And then if there is any interaction of that with our paid family medical leave. And I will offer that, you know, those are two separate programs, if that can help. And, as you know, paid family leave will have their own qualifying qualifications and eligibility requirements that are likely separate from
L & I's program. But I do hear the need maybe for just some communication from the department on how that looks. Is that accurate?

MS. LOVA: Yes, thank you.

MS. MCVICAR: Of course. Thank you.

Is there any further testimony from anyone on the phone on Phase 6? Is there any further testimony concerning the proposed rulemaking from either those on the phone or anyone here in-person before I conclude this hearing? We have a comment in the room.

MS. HAYES: Again, I'm Angela Hayes from Associated Industries. Two requests, I guess, for clarification. Under WAC 192-500-180 where it's talking about supplemental benefit payment and (2) that employers may, but are not required to, designate certain benefits including, but not limited to, salary continuation, vacation leave, sick leave, or other paid time off as a supplemental benefit. It probably would be helpful to have clarification from the state because I can see a potential conflict arising with the inclusion of sick leave as a supplemental benefit that the employer could decide not to allow an employee to tap into it if the employer decides to do that. And I can see employers wanting to perhaps not
allow supplemental benefits to be utilized because my understanding from the state is that the employee could be earning well over 100 percent of their normal wage if they are tapping into both state paid leave benefits and an employer provided benefit if the employer is allowing them to tap into it at 100 percent. So, there may be employers that choose not to allow employees to tap into supplemental benefits. And my question is or my request for clarification is, my understanding of the Washington Paid Sick Leave Law is that an employer would not be able to deny employees access to that benefit if they were out for an authorized purpose under the statute and so this creates somewhat of a conflict where an employer under this WAC might be able to say we are not going to allow you to utilize your paid sick leave benefit for an authorized purpose because we aren't designating it as a supplemental benefit under Washington Paid Family Leave. So, we're requesting a clarification and is there a conflict between paid sick leave and paid family medical leave utilization of that benefit?

And then my second request for clarification is to follow-up on the exchange that we had earlier with respect to the continuation of health benefits under Washington State Paid Leave and/or FLMA. When I
heard Ms. Freeman on the phone, I've not met her or spoken to her, and she is very well-versed in all of this and so I appreciate her follow-up. I would like to think that she and I were reading the statute in the same way, that my initial understanding was that the employer would only be required to continue health insurance benefits for an employee if they were also utilizing, not just would be qualified FLMA, but were actually utilizing FLMA, with the Washington State Paid Leave Benefit. That's how I read the statute. And I think the understanding or the clarification that I had received at that time is that the state is looking at the same type of criteria that that would qualify somebody for FMLA or whether they were capping FMLA or not, they would still be eligible for continuation of health insurance benefits simply under the state statute alone, even if they decided not to utilize FLMA but the state was going to look at criteria that mirrored, essentially, the FMLA criteria to qualify for that. So, having some clarification. And so I agree with Ms. Freeman that I think there is a discrepancy between those statutes and what the WAC says as to the employer's requirement to continue to provide a benefit to an employee who is using only the state paid leave and is not actually on FLMA but would
otherwise be qualified for FLMA because they meet its
criteria. Thank you.

MS. MCVICAR: Thank you. And, again, to
make sure I captured those, the first comment was
about -- and we definitely appreciate the challenges
of when you've got different laws in different state
agencies that address the same things, any
clarification that we can provide in working together
to do that, I think is a great comment. So, thank you
for that. And, additionally, on that continuation of
health benefits, just may be an opportunity for the
department to clarify and we do appreciate -- we hear
the comments, definitely, and it's an opportunity for
us to be able to communicate that more clearly so that
you guys understand the basis behind that rule. So
thank you again for that.

Is there any further testimony from anyone
here in the room or on the phone?

MS. SHEARER: This is Jean Shearer and it's

And my request for clarification is
regarding an employer after having met the waiting
period to clarify the minimum increment of hours that
an employee can file for leave and if they must be
consecutive, as well as the total minimum of hours
leave in a week to be eligible for the benefit.

MS. MCVICAR: Jean, thank you for your comment. We had a bit of interference when you were spelling your last name. Would you mind spelling your last name again for us?


MS. MCVICAR: Excellent. Thank you. And again your comment was seeking clarification on the eight hour consecutive minimum claim duration and one that applies both in the waiting period as well as on a weekly basis; is that correct?

MS. SHEARER: Correct. And also the minimum increments that an employee could commit after they became eligible for leave.

MS. MCVICAR: Okay. Thank you.

Is there any further testimony concerning the proposed rulemaking from either those on the phone or here in person before I conclude this hearing? At this time, I see no additional testimony from those in the room and hearing no additional requests for testimony on the phone.

All right. In conclusion, this hearing was convened to consider testimony on Phase 6 of the Paid Family and Medical Leave rulemaking related to
appeals, typical workweek hours, intermittent leave, implementing legislative changes and other topics related to establishing the program. All oral testimony presented at this hearing and written submissions will become part of the official record.

The deadline for submission of written comments is 5:00 p.m., November 12, 2019. You can submit written comments online by entering bit.ly/commentforum in your browser. Comments must be received by that deadline to be considered as part of this rulemaking. All final decisions regarding adoption of this proposed rulemaking will be made after all testimony and written comments have been fully considered, with a target date of November 17th, 2019.

On behalf of Commission Suzi Levine, thank you for participating in this hearing. This hearing is adjourned at 9:57 on November 12, 2019.

(Whereupon, the hearing concluded at 9:57 a.m.)
CERTIFICATE

STATE OF WASHINGTON

COUNTY OF STEVENS

THIS IS TO CERTIFY that I, Elizabeth Race, Certified Court Reporter in and for the State of Washington residing at Nine Mile Falls, Washington, reported the within and foregoing hearing; said hearing being taken before me as a Certified Court Reporter on the date herein set forth; that the said hearing was taken by me in shorthand and thereafter under my supervision transcribed, and that same is a full, true and correct record of the testimony.

IN WITNESS WHEREOF I have hereunto set my hand this day of , 2019.

CERT/LIC NO. 1921 /s/ Elizabeth Race
Certified Court Reporter in and for the State of Washington, residing at Nine Mile Falls, WA

Central Court Reporting   800.442.3376
4 24:10
40 17:5,8
42.30 3:3

5 9:24
50.A.05.060 3:2
510-030 19:13
58 6:7
5th 3:17

6 3:10 12:6 13:11,15 16:21 17:18
60 27:13
610-050 17:9

8 25:20

9 92-610-050 16:25
9:05 3:7
9th 8:20

A
A-N-G-E-L-A 7:2
a.m. 3:7
absence 19:10
Absolutely 15:8 19:24
accept 6:23
accepted 5:11
access 12:13 13:22 14:14
accurate 13:8 14:20 20:1 29:3

achievable 5:13
Act 3:3,4 5:7 7:18
actual 17:6
add 23:3
addition 6:2 7:13,24 10:3 11:22
13:6,23 14:17 27:14
additional 9:9 22:11
Additionally 23:16
address 5:19 10:11
addressed 11:6
addressing 11:12,21
administrative 3:4 22:12 23:15
26:15
adoption 4:22
advised 4:6
affect 28:7
agency's 4:22
aggressive 5:13
agreements 21:25
ahead 23:3
align 5:12
allowed 22:7
alternative 17:2
amount 15:4,11
amounts 22:15 23:18
Amundson 4:3,4 5:4,6
analyst 3:21
and/or 22:23 23:5
Angela 7:1 29:12
apologies 19:18
appeal 18:1,16
appeals 3:12 5:14
appeared 16:16
applicable 18:21
applicant 27:3
application 5:10 26:24
apply 9:13,18 18:15 27:17 28:8
<table>
<thead>
<tr>
<th>D</th>
<th>-</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-A-R-I-S</td>
<td>14:10</td>
</tr>
<tr>
<td>Daris</td>
<td>13:16,18,14:6,9 20:13,20</td>
</tr>
<tr>
<td>data</td>
<td>13:22</td>
</tr>
<tr>
<td>David</td>
<td>17:20</td>
</tr>
<tr>
<td>day</td>
<td>25:16</td>
</tr>
<tr>
<td>days</td>
<td>27:13</td>
</tr>
<tr>
<td>dealt</td>
<td>11:17</td>
</tr>
<tr>
<td>December</td>
<td>28:20</td>
</tr>
<tr>
<td>decide</td>
<td>9:15,29:23</td>
</tr>
<tr>
<td>decides</td>
<td>29:24</td>
</tr>
<tr>
<td>deduct</td>
<td>10:21</td>
</tr>
<tr>
<td>deductions</td>
<td>5:23</td>
</tr>
<tr>
<td>default</td>
<td>22:2</td>
</tr>
<tr>
<td>definitions</td>
<td>6:3</td>
</tr>
<tr>
<td>denied</td>
<td>18:12</td>
</tr>
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<td>deny</td>
<td>17:23</td>
</tr>
<tr>
<td>depending</td>
<td>9:5,19 13:3</td>
</tr>
<tr>
<td>designate</td>
<td>24:5 29:16</td>
</tr>
<tr>
<td>determinations</td>
<td>18:2,16 20:9</td>
</tr>
<tr>
<td>determine</td>
<td>19:15 26:12</td>
</tr>
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<td>determined</td>
<td>5:21 16:25</td>
</tr>
<tr>
<td>determining</td>
<td>19:7</td>
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<td>difference</td>
<td>8:21</td>
</tr>
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<td>difficult</td>
<td>21:12 22:16</td>
</tr>
<tr>
<td>Director</td>
<td>12:9</td>
</tr>
<tr>
<td>Division</td>
<td>3:21</td>
</tr>
<tr>
<td>document</td>
<td>5:1</td>
</tr>
<tr>
<td>dollars</td>
<td>22:24 23:5,6 24:8,9,20</td>
</tr>
<tr>
<td>Doubletree</td>
<td>3:7</td>
</tr>
<tr>
<td>draft</td>
<td>6:2,6</td>
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<tr>
<td>due</td>
<td>10:9 11:5 22:1</td>
</tr>
<tr>
<td>Dulgerian</td>
<td>17:19,20 18:6,10,15,24 19:1,4,7,17,21 20:2,5,8 21:4</td>
</tr>
<tr>
<td>duplicate</td>
<td>25:22 26:16</td>
</tr>
<tr>
<td>duration</td>
<td>14:3</td>
</tr>
<tr>
<td>e-mails</td>
<td>5:3</td>
</tr>
<tr>
<td>earlier</td>
<td>15:22</td>
</tr>
<tr>
<td>easier</td>
<td>24:19</td>
</tr>
<tr>
<td>educational</td>
<td>12:20</td>
</tr>
<tr>
<td>effect</td>
<td>10:1</td>
</tr>
<tr>
<td>effects</td>
<td>22:4</td>
</tr>
<tr>
<td>efforts</td>
<td>6:11</td>
</tr>
<tr>
<td>elective</td>
<td>19:16</td>
</tr>
<tr>
<td>eligible</td>
<td>12:18 19:8 28:4</td>
</tr>
<tr>
<td>employment</td>
<td>10:8 11:12</td>
</tr>
<tr>
<td>employer's</td>
<td>10:11 11:7,8 15:17</td>
</tr>
<tr>
<td>employment</td>
<td>3:22 20:5</td>
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<td>encourage</td>
<td>6:5</td>
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<tr>
<td>end</td>
<td>22:20</td>
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<td>end-to-end</td>
<td>8:5</td>
</tr>
<tr>
<td>entitlement</td>
<td>15:1</td>
</tr>
<tr>
<td>equal</td>
<td>13:2</td>
</tr>
<tr>
<td>ESD</td>
<td>19:9 24:11,18 27:2</td>
</tr>
<tr>
<td>established</td>
<td>13:5</td>
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<td>establishing</td>
<td>3:15 17:11</td>
</tr>
<tr>
<td>event</td>
<td>8:11,25 27:9,21</td>
</tr>
<tr>
<td>exhausted</td>
<td>12:12</td>
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<tr>
<td>exist</td>
<td>7:13,16 10:2</td>
</tr>
<tr>
<td>existed</td>
<td>16:6</td>
</tr>
<tr>
<td>existing</td>
<td>28:7,10</td>
</tr>
<tr>
<td>exists</td>
<td>7:18</td>
</tr>
<tr>
<td>expecting</td>
<td>10:6</td>
</tr>
<tr>
<td>explanation</td>
<td>5:5</td>
</tr>
<tr>
<td>explanatory</td>
<td>4:21</td>
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<tr>
<td>expressed</td>
<td>16:1</td>
</tr>
<tr>
<td>extremely</td>
<td>20:18</td>
</tr>
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<td>F</td>
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<td>F-R-E-E-M-A-N</td>
<td>14:10</td>
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<td>facility</td>
<td>4:9</td>
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<td>facing</td>
<td>9:1</td>
</tr>
<tr>
<td>fail</td>
<td>11:13</td>
</tr>
</tbody>
</table>
failed 10:12 11:10
Falls 3:8
family 3:11,21 4:1,5 5:3,7 6:4
7:18 8:2 23:1 28:21,23
fashion 8:5
federal 7:20 8:8 12:12 13:1
16:11,14
file 4:9,25 28:5,15
filed 3:16
find 15:13 19:21
FLA 28:7,9,11,14,19
FLMA 8:14 16:5
FML 20:17 28:5
FMLA 7:20,21 8:4,10,11,12,19,
22,24 9:8,13,15 10:10 11:7,18
formal 4:13 5:13
forward 6:12
found 4:18 8:22
fraud 18:7,23
fraudulent 17:24,25 18:12
Freeman 13:16,20 14:9,10,21,23
15:14,16 16:12 20:6,13 21:1
full 17:12

G

gap 10:25
general 19:23
gentleman 25:14
government 8:8
grants 5:25
gross 24:9,15,16,17
groups 22:5,10
guess 7:7,21 29:13
guidance 11:20,24 13:24 14:4,
19 15:2,6 17:22 18:22 19:11
23:17 26:4 27:19

H

H-A-Y-E-S 7:2
Hayes 7:1 12:4 29:12
health 7:14,25 9:22 10:10,13
healthcare 11:25
hear 6:15 21:12,16 29:1
heard 23:23
hearing 3:4,6,9,15,24,25 4:2,7,
12,13 5:14 6:12 29:10
helpful 11:5 20:19 29:20
helps 26:10
Hilton 3:8
hours 3:13 5:15,21 16:25 17:5,6,
7:8 19:8,10,15 20:2,3,5,23,24
22:25 23:4 24:10,11,18,20 25:20,
26:10
Human 12:9 21:15

I

I's 28:19 29:1
implement 6:11
implementation 5:16
implementing 3:13
important 6:12
in-person 29:9
inaudible 22:20
incentive 7:19 8:6 9:7
included 21:23 23:5
including 4:22 29:17
inclusion 29:22
income 10:20 11:2 22:18
individual 17:7
individuals 5:19 17:5 28:3,8
Industries 7:3 29:13
information 14:3

initial 26:24
initially 7:13
institute 24:14
insurance 7:14,25 9:22 10:10,13
intended 6:7 9:5
interact 5:20 15:14,15 16:10
interaction 16:14 28:20
interacts 15:1,5,11
interest 6:9
interested 3:18 5:2
interference 8:23
intermittent 3:13 5:15
interpret 6:7
introduce 4:2
invite 21:3
involves 17:21
involving 22:24
issue 9:17,25 15:23 26:11
issued 8:9,18
issues 7:9 10:4 11:18 15:2 16:1

J

January 5:9,11 12:13 13:1
jeopardy 7:6,7
job 9:21 11:19 20:7,15,25
joining 13:13 25:1 26:22
jump 14:24
Justice 8:8,18

K

kind 20:23 23:20 26:2

L

L-O-V-A 16:23 28:1
labor 22:5
lag 22:19
thought 25:20 26:7
throwing 10:7
tied 20:24
times 15:12
timing 22:14
Title 6:7
to-date 15:6
today 4:4 12:7
told 17:3
Tony 17:19
top 22:17,22 23:19 24:7,20
topic 20:14
topics 3:14 5:14 6:1
total 23:1,4
tracking 19:13,20 26:5
transcribed 4:7
transcriber 14:8
transcript 4:8
transcription 4:9
transition 28:4
transitioned 28:12
transmitted 14:5
tremendous 22:11
turn 13:12
typical 3:12 5:14,21 13:5 15:12 16:25 17:3
typing 4:18

understood 23:22
undue 16:7
unfortunate 9:25
unintended 10:1
unknowns 13:21
unpaid 15:19 16:6 19:10 20:16
updated 6:3
Upper 12:9
utilize 8:19,24
utilizing 7:21 8:6 10:18,25

V

vacation 10:19 26:14 29:18
version 7:16

W

W-I-N-D-O-W-S 25:10
WAC 16:24 17:1,12,22 18:5 19:5 21:21 29:14
wage 10:25 26:11
wages 5:10 19:15 20:1 25:15,17,21 26:1,5,9
waiting 15:1,5,10,19
waivers 5:22
wanted 17:1
wanting 29:25
week 3:13 5:15,21 15:10,13
weekly 5:23 14:2
weeks 9:4,15,19 12:14,16,18,20 13:5 15:19,20
Wilson 16:22 17:15
window 4:20

Windows 25:4,7,10,12 26:7,23 27:6,11,18
word 4:19
wording 10:2
work 3:12 5:15,21 7:10 13:5 15:13 19:8
worked 17:6 19:11 20:2,3 25:25 26:10
working 7:9
workplace 9:4
works 17:7
workweek 16:25 17:3
writing 16:17
wrong 19:17
WSR 3:17

U

U-L-G-E-R-I-A-N 17:21
unclear 15:5
understand 7:11 15:18 18:20 22:2
understanding 6:6 9:10 12:14 28:18

Index: thought..WSR
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