
MEETING VIA MICROSOFT TEAMS
RE: WA CARES SHB 1732, ESHB 1733, and PHASE 3 -
EMPLOYER AUDITS
Tuesday, September 6, 2022
Olympia, Washington

APPEARANCES:

PRESIDING: JANETTE BENHAM
Rules Coordinator
Leave & Care Division

ALSO PRESENT: JASON BARRETT
Lead Policy Analyst
Leave & Care Division

BRETT CAIN
Policy Analyst
Leave & Care Division

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1 BE IT REMEMBERED that on Tuesday,
2 September 6, 2022, at 9:04 a.m. via Microsoft Teams,
3 before TAYLER GARLINGHOUSE, Certified Court Reporter,
4 the following proceedings were had, to wit:

5
6 MS. BENHAM: Good morning, everyone. My
7 name is Janette Benham, and I'm the the rules
8 coordinator for the Leave and Care Division of the
9 Washington State Employment Security Department. Thank
10 you for joining us today for this rulemaking hearing.
11 I'd like to discuss a few housekeeping items before we
12 begin the hearing.

13 Just a reminder that this meeting concerns
14 proposed regulations regarding the WA Cares program.
15 This meeting will not feature discussion of any specific
16 application and attendance is completely optional.

17 If you have questions regarding your own
18 application for exemption or weekly claim for Paid
19 Family and Medical Leave or if you have other general
20 questions, please call our customer care team at
21 833-717-2273. We won't be able to answer any questions
22 during this meeting.

23 Today's hearing is regarding the proposal
24 that adds and revises sections of Washington
25 Administrative Code regarding the implementation of

1 Substitute House Bill 1732, Engrossed Substitute House
2 Bill 1733, and Phase 3 of the Department's original
3 program implementation regarding employer audits.
4 Implementation of the bills and Phase 3 were combined
5 into one proposal.

6 If you would like to provide written
7 comments related to these rules, you may do so by email
8 at rules@esd.wa.gov. We'll continue to accept written
9 comments through the close of business today.

10 To view the electronic version of the
11 proposed rules, you can go to esd.wa.gov slash
12 newsroom -- all one word -- slash rulemaking slash LTSS.
13 Under the "Rules Under Development" heading, the
14 proposed rules are listed under the "Documents" title in
15 the CR-102 section. The rules for today's hearing are
16 listed after the "Proposed rules" title. Clicking on
17 each of the topics will bring up the proposed rules for
18 each individual chapter. As we progress through the
19 hearing, you may have to use your browser's back button
20 to view the next chapter of rules we'll be discussing.

21 Before we begin, are there any questions
22 about the purpose of today's meeting or where to find
23 the proposed rules? You can unmute yourselves using
24 your Team's window or by hitting star 6 if you're
25 joining by phone. Oftentimes individuals find

1 themselves double muted when dialling in. If this
2 happens, you must unmute by pushing star 6 on your phone
3 and then pushing the mute/unmute button on your phone.

4 Are there any questions? If you've just
5 joined the call, can you please mute yourself?

6 Okay. Hearing no questions, we will go
7 ahead and start the hearing.

8 Pursuant to the authority given under
9 Washington State Law RCW 50B.04.020, RCW 50B.04.055, RCW
10 50B.04.080, RCW 50B.04.085, RCW 50B.04.090, Chapter
11 42.30 RCW of the Open Public Meetings Act, and Chapter
12 34.05 of the Administrative Procedure Act, this hearing
13 is hereby convened.

14 For the record, this hearing is beginning at
15 9:04 a.m. on September 6th, 2022, online and by
16 conference call.

17 This hearing is convened to consider
18 testimony concerning rulemaking for the Long-Term
19 Services and Supports Trust Program, also known as the
20 WA Cares Fund.

21 At a high level, this rulemaking amends
22 existing rules and creates new rules to implement
23 Substitute House Bill 1732, Engrossed Substitute House
24 Bill 1733, and Phase 3 of the Department's original
25 program implementation.

1 Notice of this hearing was filed on
2 August 3rd, 2022, and published in the Washington State
3 Register as WSR No. 22-16-111, was sent to interested
4 parties, and was posed on the Department's web page.

5 My name is Janette Benham, and I'm the rules
6 coordinator of the Leave and Care Division of the
7 Washington State Employment Security Department. I
8 represent Commissioner Cami Feek as the hearing officer
9 presiding at this public rulemaking hearing. There are
10 other members of the Leave and Care Policy team
11 attending this hearing. Please introduce yourselves by
12 name and title.

13 MR. BARRETT: Jason Barrett, lead policy
14 analyst.

15 MR. CAIN: Good morning. Brett Cain, policy
16 analyst, Leave & Care Division.

17 MS. BENHAM: Please be advised that this
18 hearing is being transcribed by a court reporter and is
19 also being recorded by the Microsoft Teams platform.
20 The transcript and recording will become a part of the
21 official rulemaking file. To facilitate the
22 transcription, please state and then spell your name
23 before your testimony. If you are here in a
24 representative capacity, please include who you are
25 providing testimony on behalf of.

1 Please also note that this hearing is
2 convened to consider comments on the proposed rules.
3 Because of the formal nature of this hearing, we are
4 unlikely to answer any questions you may ask. If you do
5 pose a question, I will ask you to rephrase your
6 question as a comment. Questions can be emailed to us
7 at paidleave@esd.wa.gov or at
8 wacaresexemptions@esd.wa.gov, where our customer support
9 staff will respond to your question. Written comments
10 on the proposed rules will be accepted through today by
11 email at rules@esd.wa.gov.

12 **A Concise Explanatory Statement of the**
13 **agency's reasons for adoption of the rules, including a**
14 **summary and response to all comments received after the**
15 **publication of the proposed rules, will be placed in the**
16 **permanent rulemaking file and posted online. This**
17 **document will also be sent to interested parties who**
18 **have signed up to receive WA Cares Funds rules email.**

19 **We will begin with Brett Cain who will**
20 **provide a brief explanation of the proposal.**

21 MR. CAIN: Thank you, Janette.

22 Earlier this year, the Washington State
23 legislature voted to pass Substitute House Bill 1732 and
24 Engrossed Substitute House Bill 1733. The governor
25 signed the bills on January 27th, 2022. The proposed

1 rules we are discussing today are necessary to implement
2 sections of the bills which, among other provisions,
3 delay the WA Cares program by 18 months, create four new
4 voluntary exemptions, and outline specific requirements
5 to qualify for those exemptions.

6 Individuals are also required to discontinue
7 certain exemptions when they no longer qualify. The
8 four new voluntary exemptions created by Engrossed
9 Substitute House Bill 1733 are for veterans who have a
10 service-connected disability rating of 70 percent or
11 greater, spouses or registered domestic partners of
12 active-duty U.S. armed force service members, holders of
13 nonimmigrant visas for temporary workers, and
14 individuals who maintain permanent primary residence
15 outside of Washington.

16 The proposed rules also include Phase 3 of
17 the Department's original implementation of the program
18 and address employer audit procedures.

19 We encourage you all to read the text of the
20 bills and the rules along with the supporting documents
21 for a more robust understanding.

22 Thank you all for your interest and
23 participation in our rulemaking efforts, and we look
24 forward to hearing your comments today.

25 Janette.

1 MS. BENHAM: Thank you. We will now hear
2 testimony from those in attendance. I will go through
3 each rule individually, outline the proposed amendments
4 to each rule, and accept comment on each rule.

5 All attendees are currently muted. If you
6 wish to speak, you can unmute yourself through your
7 Teams window or by pressing star 6 if you are joining by
8 phone. If you are double muted when using your phone to
9 call in, please remember to press star 6 and then unmute
10 your phone using your phone's mute/unmute button.

11 When you testify, please speak clearly,
12 state your name, spell your last name, and state who you
13 represent if you are here in a representative capacity.
14 When you finish testifying, please mute yourself through
15 your Teams window or press star 6 again on your phone.

16 The first topic for today's hearing is
17 regarding employer audits. The first rule we'll accept
18 comment on is WAC 192-930-005: Audit Procedures. RCW
19 50B.04.020 requires the Department to perform
20 investigations to determine the compliance of premium
21 payments in coordination with the same activities
22 conducted under the Paid Family and Medical Leave
23 program.

24 This is a new rule that references employer
25 audits and mirrors the audit procedures rule for Paid

1 Family and Medical Leave with the exception of the
2 reference to Title 50B RCW for the WA Cares program.

3 We are now ready to accept public comment on
4 WAC 192-930-005: Audit Procedures.

5 Is there anyone on the line or on the call
6 who would like to provide comment on this rule?

7 Okay. We will move on to the next rule.
8 The next rule we will accept public comment on is WAC
9 192-930-010: What happens if an employer fails to
10 provide requested information to the Department for an
11 audit?

12 This is a new rule that references how the
13 Department will obtain information if an employer fails
14 to provide requested payroll or other wage information
15 to the Department for an audit. Again, RCW 50B.04.020
16 requires the Department to perform investigations to
17 determine the compliance of premium payments in
18 coordination with the same activities conducted under
19 the Paid Family and Medical Leave program. The rule
20 mirrors the Paid Family and Medical Leave rule, with the
21 exception of the reference to title 50B RCW for the WA
22 Cares program.

23 We are now ready to accept public comment on
24 WAC 192-930-010: What happens if an employer fails to
25 provide requested information to the Department for an

1 audit?

2 Is there anyone on who would like to provide
3 comment on this rule?

4 Okay. Hearing none, we will go ahead and
5 move on. The next topic for today's hearing is
6 exemptions. The first rule we'll accept public comment
7 on is WAC 192-905-005: Eligibility requirements for an
8 employee to receive a permanent exemption from the
9 Long-Term Services and Supports Trust Program.

10 The proposed amendments to this rule clarify
11 that the exemptions listed are permanent and add the
12 permanent exemption for veterans who have a
13 service-connected disability rating of 70 percent or
14 greater. The rule outlines when applications will be
15 accepted based on requirements in the law. The rule
16 also states the documentation to verify the disability
17 rating will be required.

18 We are now ready to accept public comment
19 for WAC 192-905-005: Eligibility requirements for an
20 employee to receive a permanent exemption from the
21 Long-Term Services and Supports Trust Program.

22 Is there anyone who would like to provide
23 comment on this rule?

24 Okay. The next rule we'll accept comment on
25 is WAC 192-905-006: Eligibility requirements for an

1 employee to receive a conditional exemption from the
2 Long-Term Services and Supports Trust Program.

3 This is a new rule and outlines the three
4 types of conditional exemptions individuals may apply
5 for to include spouses or registered domestic partners
6 of active duty service members in the United States
7 armed forces, holders of nonimmigrant visas for
8 temporary workers, and employees who maintain permanent
9 primary residence outside of Washington.

10 The rule outlines that the documentation to
11 verify or substantiate the exemption is required at the
12 time of application. The rule references the
13 requirement that employees must notify their employers
14 and the Department within 90 days of no longer
15 qualifying for their exemptions so their exemption can
16 be discontinued. The rule also references notification
17 and penalty requirements that are outlined in a
18 different rule.

19 We are now ready to accept public comment
20 WAC 192-905-006: Eligibility requirements for an
21 employee to receive a conditional exemption from the
22 Long-Term Services and Trust Program.

23 Is there anyone who would like to provide
24 comment on this rule?

25 MR. DILLEY: This is Scott Dilley. I'd like

1 to provide some comments.

2 MS. BENHAM: Thank you, Scott. Can you
3 please spell your last name and state if you're here in
4 a representative capacity.

5 MR. DILLEY: Yes. So first name is Scott,
6 S-C-O-T-T. Last name is Dilley, D-I-L-L-E-Y. And I'm
7 the communication director at Wafla, W-A-F-L-A. And
8 Wafla is a nonprofit organization that facilitates the
9 employment of H-2A and H-2B workers, and those workers
10 are -- they have, you know, nonimmigrant visa status
11 among other different, you know -- there are many
12 different nonimmigrant visa programs available, but H-2A
13 and H-2B are two that we specialize in.

14 And the State of Washington -- employers in
15 the State of Washington bring in approximately 30,000
16 H-2A workers each year, and the -- as we read the text
17 of House Bill 1733, it appears to us that the
18 legislature granted a -- what I'd say a categorical
19 exemption based on this visa status.

20 And as we read the rules, we became a little
21 concerned that rules would require each of these, let's
22 say, 30,000 workers to apply for an individual exemption
23 from the Washington Cares program, and we're asking that
24 these rules be written in such a way as to avoid a
25 cumbersome, inefficient, individualized process.

1 You know, for example, requiring each worker
2 to sign up for a Secure Access Washington account to
3 secure the exemption would really create an unnecessary
4 barrier for these workers.

5 So we believe the exemption needs to be also
6 retroactive to first date of employment because of the
7 language that the legislature put in House Bill 1733,
8 and allowing for things like batch entry of, you know,
9 multiple employees, I think, would be helpful to this
10 process. It would create more of an efficiency, you
11 know, in terms of -- and not only for the employees but
12 for the employers and the Department when granting
13 exemptions for workers who qualify under this
14 nonimmigrant visa exemption.

15 So in short, we ask that the rules
16 contemplate, address, and resolve these issues, and I
17 will be providing some written comment by the close of
18 business today that will further elaborate on this oral
19 testimony. So with that, thank you very much for
20 hearing our perspectives, and I will send you written
21 comment later today. Thank you.

22 MS. BENHAM: Thank you, Scott.

23 Elizabeth, it looks like you have your hand
24 up, if you would like to comment on this rule.

25 MS. HOVDE: Hi. I think for this to be a

1 true exemption, people who 1733 applies to should
2 receive an automatic exemption, not one that --

3 MS. BENHAM: Can I interrupt you for just a
4 moment, please. Can you spell your name for the
5 stenographer and state who you're here, if you're
6 representing -- if you're here in a representative
7 capacity.

8 MS. HOVDE: Yes. I'm so sorry. My name is
9 Elizabeth Hovde. First name Elizabeth. Last
10 name H-O-V-D-E, and I work for Washington Policy Centers
11 of policy analysts. I'll be representing them.

12 All right. I just wanted to comment, I
13 think for this to be a true exemption, people who 1733
14 applies to should get an automatic exemption, not one
15 they have to apply for. I agree with Scott Dilley's
16 concerns and solutions regarding the nonimmigrant visa
17 category and batch-type solutions. And that's my
18 comment.

19 MS. BENHAM: Great. Thank you.

20 Is there anyone else who would like to
21 provide comment on this rule? Elizabeth, did you have
22 an additional comment? Your hand is up still. Just
23 wanted to double check.

24 MS. HOVDE: No. I'm just horrible at this.
25 I will lower my hand, and I apologize.

1 MR. DILLEY: Janette, I will say that I
2 do -- I do agree with Elizabeth's comment there on just
3 an automatic exemption. I think that's what the
4 legislature intended, so --

5 MS. BENHAM: Just for the record --

6 MR. DILLEY: -- It would be nice to just
7 have that categorical exemption happen automatically.

8 MS. BENHAM: For the record, Scott, since
9 you're speaking again, can you, for the record, please
10 state --

11 MR. DILLEY: Yes. Yes. I'm Scott Dilley.
12 Last name, D-I-L-L-E-Y, again, with Wafla. Just chiming
13 in to agree with what Elizabeth just said there about,
14 you know, the -- the idea here is that the legislature
15 granted a categorical exemption to nonimmigrant visa
16 holders, and that exemption should be automatic, and to
17 anything the Department can do to facilitate, you know,
18 granting or recognizing that exemption as quickly as
19 possible without a cumbersome process is certainly
20 something we would support. We don't want this to be a
21 difficult process for anyone involved. Thank you.

22 MS. BENHAM: Thank you, Scott.

23 Is there anyone else who would like to
24 provide comment on this rule?

25 Okay. The next rule we'll accept public

1 comment on is WAC 192-905-007: Notification
2 requirements and penalties for discontinuing conditional
3 exemptions.

4 This is a new rule that outlines the
5 requirement that employees must notify their employers
6 and the Department within 90 days of no longer
7 qualifying for their exemption. It establishes the
8 effective date of the discontinued exemption as the
9 quarter immediately following notification at which time
10 premiums will be assessed. It also outlines that
11 employees who fail to provide notifications will owe any
12 unpaid premiums plus interest to the Department.

13 We are now ready to accept public comment
14 for WAC 192-905-007: Notification requirements and
15 penalties for discontinuing conditional exemptions.

16 Is there anyone who would like to provide
17 comment on this rule?

18 The next rule we'll accept public comment on
19 is WAC 192-905-010: How and when can an employee apply
20 for an exemption from the Long-Term Services and
21 Supports Trust program.

22 The provided amendments to this rule clarify
23 application requirements and timelines including the
24 effective date of approved exemptions and how
25 individuals may apply for exemptions. The rule outlines

1 that applications are available online or in another
2 format approved by the Department in order to
3 accommodate individuals who may need additional
4 assistance with the application process.

5 We are now ready to accept public comment on
6 WAC 192-905-010: How and when can an employee apply for
7 an exemption from the Long-Term Services and Supports
8 Trust Program?

9 Are there any comments on the rule?

10 MS. THORNTON: Hi. This is Erin Thornton,
11 last name T-H-O-R-N-T-O-N. Looking at all of the
12 exemption language that's been thrown around for the
13 last year and a half, I find it grossly inappropriate
14 that there is a single window for people affected by
15 this to get an exemption.

16 You know, as a mom of a teenager who will
17 never have the option to secure his own private coverage
18 that is more robust than what is being offered by the
19 State, I think that is a grave disservice to all of the
20 workers in Washington State that needs to be rectified.

21 MS. BENHAM: Thank you for your comment.

22 Is there anyone else who would like to
23 provide comment on this rule?

24 Okay. The next topic for today's hearing is
25 employer responsibilities. The next rule we'll accept

1 public comment on is WAC 192-910-015: What are the
2 employer's responsibilities for premium deductions? The
3 proposed amendments to this rule outline the employer's
4 responsibilities for premium assessment once notified by
5 an employee that they are no longer exempt.

6 We are now ready to accept public comment on
7 WAC 192-910-015: What are the employer's
8 responsibilities for premium deductions?

9 Is there anyone on who would like to provide
10 comment?

11 It looks like someone just raised their
12 hand. I just want to verify and give you an opportunity
13 to provide comment if you'd like to. Rolonda Bright,
14 would you like to provide comment on this rule?

15 MS. BRIGHT: It's more of a question than a
16 comment, so it's probably...

17 MS. BENHAM: Rolonda, if you could please
18 spell -- state and spell your name and if you're here in
19 a representative capacity. And just a reminder that we
20 aren't able to answer questions during this call, so if
21 you do have a question, if you could phrase it in the
22 form of a comment, that would be great. Thank you.

23 MS. BRIGHT: Yes. So that was my thing. So
24 I probably don't have a comment because it was more of a
25 question, but thank you.

1 MS. BENHAM: Great. Thank you.

2 Is there anyone else who would like to
3 provide comment on this rule?

4 Okay. The next topic for today's hearing is
5 self-employed persons. The next rule we'll accept
6 public comment on is WAC 129-915-005: Election of
7 coverage for self-employed persons. The proposed
8 amendments to this rule change the elective coverage
9 date for self-employed persons due to the 18-month delay
10 of the WA Cares program implementation.

11 We are now ready to accept public comment on
12 WAC 192-915-005: Election of coverage for self-employed
13 persons.

14 Is there anyone who would like to provide
15 comment on this rule?

16 The last rule we'll accept public comment on
17 for today's hearing is WAC 192-915-015: How will the
18 Department determine the wages earned and hours worked
19 for self-employed persons electing coverage?

20 The proposed amendments to this rule clarify
21 what portions of the Paid Family and Medical Leave rule
22 will apply to the WA Cares program. Specifically, the
23 changes exclude subsection 3, which references hours for
24 qualifying period for Paid Family and Medical Leave
25 which doesn't apply to WA Cares.

1 We are now ready to accept public comment on
2 WAC 192-915-015: How will the Department determine the
3 wages earned and hours worked for self-employed persons
4 electing coverage?

5 Is there anyone who would like to provide
6 comment on this rule?

7 I'd like to take a moment and ask if there
8 is any additional testimony on any of the proposed rules
9 included in today's hearing. If there is any additional
10 testimony, please feel free to provide comment now and
11 indicate which rule you're providing comment on.

12 I believe there is someone who is unmuted.
13 If you could please just double check and make sure
14 you're muted unless you're providing a comment or
15 testimony, that would be great.

16 Okay. Is there any further testimony or
17 comment from anyone on the phone before I conclude this
18 hearing?

19 In conclusion, this hearing was convened to
20 consider testimony on WA Cares fund rulemaking. All
21 oral testimony presented at this hearing and written
22 submissions will be become part of the official record.

23 The deadline for submission of written
24 comments is today, September 6th, 2022. You may submit
25 written comments by emailing rules@esd.wa.gov. Comments

1 must be received by the end of the day to be considered
2 part of this rulemaking. A final decision regarding
3 adoption of the proposed rules will be made after all
4 testimony and written comments have been fully
5 considered, which will be on or after September 13th of
6 2022.

7 On behalf of Acting Commissioner -- on
8 behalf of Commissioner Cami Feek, thank you for
9 participating in the hearing. This hearing is adjourned
10 at 9:35 a.m. on September 6th, 2022. Thank you.

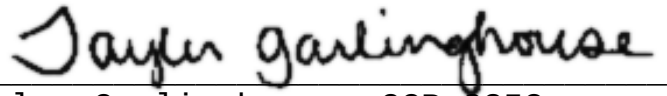
11 (Hearing adjourned at 9:35 a.m.)
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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand
Reporter in and for the State of Washington, do hereby
certify that the foregoing transcript is true and
accurate to the best of my knowledge, skill and ability.

A handwritten signature in cursive script that reads "Tayler Garlinghouse". The signature is written in black ink and is positioned above a horizontal line.

Tayler Garlinghouse, CCR 3358

1 129-915-005 19:6 13th 21:5 1732 3:1 4:23 6:23 1733 3:2 4:24 6:24 7:9 12:17 13:7 14:1,13 18 7:3 18-month 19:9 192-905-005 10:7,19 192-905-006 10:25 11:20 192-905-007 16:1,14 192-905-010 16:19 17:6 192-910-015 18:1,7 192-915-005 19:12 192-915-015 19:17 20:2 192-930-005 8:18 9:4 192-930-010 9:9,24 2 2022 2:2 4:15 5:2 6:25 20:24 21:6,10 22-16-111 5:3 27th 6:25 3 3 3:2,4 4:24 7:16 19:23 30,000 12:15,22 3358 22:11 34.05 4:12 3rd 5:2 4 42.30 4:11	5 50B 9:2,21 50B.04.020 4:9 8:19 9:15 50B.04.055 4:9 50B.04.080 4:10 50B.04.085 4:10 50B.04.090 4:10 6 6 2:2 3:24 4:2 8:7,9,15 6th 4:15 20:24 21:10 7 70 7:10 10:13 8 833-717-2273 2:21 9 90 11:14 16:6 9:04 2:2 4:15 9:35 21:10,11 A a.m. 2:2 4:15 21:10,11 ability 22:9 accept 3:8 8:4,17 9:3, 8,23 10:6,18,24 11:19 15:25 16:13,18 17:5, 25 18:6 19:5,11,16 20:1 accepted 6:10 10:15 Access 13:2 accommodate 17:3 account 13:2 accurate 22:9	Act 4:11,12 Acting 21:7 active 11:6 active-duty 7:12 activities 8:21 9:18 add 10:11 additional 14:22 17:3 20:8,9 address 7:18 13:16 adds 2:24 adjourned 21:9,11 Administrative 2:25 4:12 adoption 6:13 21:3 advised 5:17 affected 17:14 agency's 6:13 agree 14:15 15:2,13 ahead 4:7 10:4 allowing 13:8 amendments 8:3 10:10 16:22 18:3 19:8, 20 amends 4:21 analyst 5:14,16 analysts 14:11 apologize 14:25 appears 12:17 application 2:16,18 11:12 16:23 17:4 applications 10:14 17:1 applies 14:1,14 apply 11:4 12:22 14:15 16:19,25 17:6 19:22,25 approved 16:24 17:2 approximately 12:15 armed 7:12 11:7	assessed 16:10 assessment 18:4 assistance 17:4 attendance 2:16 8:2 attendees 8:5 attending 5:11 audit 7:18 8:18,25 9:4, 11,15 10:1 audits 3:3 8:17,25 August 5:2 authority 4:8 automatic 14:2,14 15:3,16 automatically 15:7 avoid 12:24 B back 3:19 Barrett 5:13 barrier 13:4 based 10:15 12:19 batch 13:8 batch-type 14:17 begin 2:12 3:21 6:19 beginning 4:14 behalf 5:25 21:7,8 Benham 2:6,7 5:5,17 8:1 12:2 13:22 14:3,19 15:5,8,22 17:21 18:17 19:1 Bill 3:1,2 4:23,24 6:23, 24 7:9 12:17 13:7 bills 3:4 6:25 7:2,20 Brett 5:15 6:19 Bright 18:13,15,23 bring 3:17 12:15 browser's 3:19 business 3:9 13:18 button 3:19 4:3 8:10
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C	Commissioner 5:8 21:7,8 communication 12:7 completely 2:16 compliance 8:20 9:17 concerned 12:21 concerns 2:13 14:16 Concise 6:12 conclude 20:17 conclusion 20:19 conditional 11:1,4,21 16:2,15 conducted 8:22 9:18 conference 4:16 considered 21:1,5 contemplate 13:16 continue 3:8 convened 4:13,17 6:2 20:19 coordination 8:21 9:18 coordinator 2:8 5:6 COUNTY 22:4 court 2:3 5:18 coverage 17:17 19:7, 8,12,19 20:4 CR-102 3:15 create 7:3 13:3,10 created 7:8 creates 4:22 cumbersome 12:25 15:19 customer 2:20 6:8	days 11:14 16:6 deadline 20:23 decision 21:2 deductions 18:2,8 delay 7:3 19:9 Department 2:9 5:7 8:19 9:10,13,15,16,25 11:14 13:12 15:17 16:6,12 17:2 19:18 20:2 Department's 3:2 4:24 5:4 7:17 determine 8:20 9:17 19:18 20:2 Development 3:13 dialling 4:1 difficult 15:21 Dilley 11:25 12:5,6 15:1,6,11 Dilley's 14:15 director 12:7 disability 7:10 10:13, 16 discontinue 7:6 discontinued 11:16 16:8 discontinuing 16:2, 15 discuss 2:11 discussing 3:20 7:1 discussion 2:15 disservice 17:19 Division 2:8 5:6,16 document 6:17 documentation 10:16 11:10 documents 3:14 7:20 domestic 7:11 11:5 double 4:1 8:8 14:23 20:13 due 19:9	duty 11:6 E Earlier 6:22 earned 19:18 20:3 effective 16:8,24 efficiency 13:10 efforts 7:23 elaborate 13:18 electing 19:19 20:4 Election 19:6,12 elective 19:8 electronic 3:10 Eligibility 10:7,19,25 11:20 Elizabeth 13:23 14:9, 21 15:13 Elizabeth's 15:2 email 3:7 6:11,18 emailed 6:6 emailing 20:25 employee 10:8,20 11:1,21 16:19 17:6 18:5 employees 11:8,13 13:9,11 16:5,11 employer 3:3 7:18 8:17,24 9:9,13,24 17:25 employer's 18:2,3,7 employers 11:13 12:14 13:12 16:5 employment 2:9 5:7 12:9 13:6 encourage 7:19 end 21:1 Engrossed 3:1 4:23 6:24 7:8 entry 13:8 Erin 17:10
----------------------	--	--	---

esd.wa.gov 3:11 establishes 16:7 exception 9:1,21 exclude 19:23 exempt 18:5 exemption 2:18 10:8, 12:20 11:1,11,15,21 12:19,22 13:3,5,14 14:1,2,13,14 15:3,7, 15,16,18 16:7,8,20 17:7,12,15 exemptions 7:4,5,7,8 10:6,11 11:4,15 13:13 16:3,15,24,25 existing 4:22 explanation 6:20 Explanatory 6:12 F facilitate 5:21 15:17 facilitates 12:8 fail 16:11 fails 9:9,13,24 Family 2:19 8:22 9:1, 19,20 19:21,24 feature 2:15 Feek 5:8 21:8 feel 20:10 file 5:21 6:16 filed 5:1 final 21:2 find 3:22,25 17:13 finish 8:14 force 7:12 forces 11:7 foregoing 22:8 form 18:22 formal 6:3 format 17:2	forward 7:24 free 20:10 fully 21:4 fund 4:20 20:20 Funds 6:18 G Garlinghouse 2:3 22:6,11 general 2:19 give 18:12 Good 2:6 5:15 governor 6:24 granted 12:18 15:15 granting 13:12 15:18 grave 17:19 great 14:19 18:22 19:1 20:15 greater 7:11 10:14 grossly 17:13 H H-2A 12:9,12,16 H-2B 12:9,13 H-O-V-D-E 14:10 half 17:13 hand 13:23 14:22,25 18:12 happen 15:7 heading 3:13 hear 8:1 hearing 2:10,12,23 3:15,19 4:6,7,12,14,17 5:1,8,9,11,18 6:1,3 7:24 8:16 10:4,5 13:20 17:24 19:4,17 20:9,18, 19,21 21:9,11 helpful 13:9 high 4:21	hitting 3:24 holders 7:12 11:7 15:16 horrible 14:24 hours 19:18,23 20:3 House 3:1 4:23 6:23, 24 7:9 12:17 13:7 housekeeping 2:11 Hovde 13:25 14:8,9, 24 I idea 15:14 immediately 16:9 implement 4:22 7:1 implementation 2:25 3:3,4 4:25 7:17 19:10 inappropriate 17:13 include 5:24 7:16 11:5 included 20:9 including 6:13 16:23 individual 3:18 12:22 individualized 12:25 individually 8:3 individuals 3:25 7:6, 14 11:4 16:25 17:3 inefficient 12:25 information 9:10,13, 14,25 intended 15:4 interest 7:22 16:12 interested 5:3 6:17 interrupt 14:3 introduce 5:11 investigations 8:20 9:16 involved 15:21 issues 13:16 items 2:11	J Janette 2:7 5:5 6:21 7:25 15:1 January 6:25 Jason 5:13 joined 4:5 joining 2:10 3:25 8:7 K knowledge 22:9 L language 13:7 17:12 law 4:9 10:15 lead 5:13 Leave 2:8,19 5:6,10, 16 8:22 9:1,19,20 19:21,24 legislature 6:23 12:18 13:7 15:4,14 level 4:21 listed 3:14,16 10:11 Long-term 4:18 10:9, 21 11:2,22 16:20 17:7 longer 7:7 11:14 16:6 18:5 lower 14:25 LTSS 3:12 M made 21:3 maintain 7:14 11:8 make 20:13 Medical 2:19 8:22 9:1, 19,20 19:21,24 meeting 2:13,15,22 3:22 Meetings 4:11
---	--	--	--

members 5:10 7:12 11:6 Microsoft 2:2 5:19 mirrors 8:25 9:20 mom 17:16 moment 14:4 20:7 months 7:3 morning 2:6 5:15 move 9:7 10:5 multiple 13:9 mute 4:5 8:14 mute/unmute 4:3 8:10 muted 4:1 8:5,8 20:14 N nature 6:3 newsroom 3:12 nice 15:6 nonimmigrant 7:13 11:7 12:10,12 13:14 14:16 15:15 nonprofit 12:8 note 6:1 Notice 5:1 notification 11:16 16:1,9,14 notifications 16:11 notified 18:4 notify 11:13 16:5 O obtain 9:13 offered 17:18 officer 5:8 official 5:21 20:22 Oftentimes 3:25 online 4:15 6:16 17:1	Open 4:11 opportunity 18:12 option 17:17 optional 2:16 oral 13:18 20:21 order 17:2 organization 12:8 original 3:2 4:24 7:17 outline 7:4 8:3 18:3 outlined 11:17 outlines 10:14 11:3, 10 16:4,10,25 owe 16:11 P Paid 2:18 8:22,25 9:19,20 19:21,24 paidleave@esd.wa.gov 6:7 part 5:20 20:22 21:2 participating 21:9 participation 7:23 parties 5:4 6:17 partners 7:11 11:5 pass 6:23 payments 8:21 9:17 payroll 9:14 penalties 16:2,15 penalty 11:17 people 14:1,13 17:14 percent 7:10 10:13 perform 8:19 9:16 period 19:24 permanent 6:16 7:14 10:8,11,12,20 11:8 persons 19:5,7,9,13, 19 20:3 perspectives 13:20	Phase 3:2,4 4:24 7:16 phone 3:25 4:2,3 8:8, 10,15 20:17 phone's 8:10 phrase 18:21 platform 5:19 policy 5:10,13,15 14:10,11 portions 19:21 pose 6:5 posed 5:4 posted 6:16 premium 8:20 9:17 18:2,4,8 premiums 16:10,12 presented 20:21 presiding 5:9 press 8:9,15 pressing 8:7 primary 7:14 11:9 private 17:17 Procedure 4:12 procedures 7:18 8:18,25 9:4 proceedings 2:4 process 12:25 13:10 15:19,21 17:4 program 2:14 3:3 4:19,25 7:3,17 8:23 9:2,19,22 10:9,21 11:2,22 12:23 16:21 17:8 19:10,22 programs 12:12 progress 3:18 proposal 2:23 3:5 6:20 proposed 2:14 3:11, 14,16,17,23 6:2,10,15, 25 7:16 8:3 10:10 18:3 19:7,20 20:8 21:3 provide 3:6 6:20 9:6, 10,14,25 10:2,22	11:23 12:1 14:21 15:24 16:11,16 17:23 18:9,13,14 19:3,14 20:5,10 provided 16:22 providing 5:25 13:17 20:11,14 provisions 7:2 public 4:11 5:9 9:3,8, 23 10:6,18 11:19 15:25 16:13,18 17:5 18:1,6 19:6,11,16 20:1 publication 6:15 published 5:2 purpose 3:22 Pursuant 4:8 pushing 4:2,3 put 13:7 Q qualify 7:5,7 13:13 qualifying 11:15 16:7 19:24 quarter 16:9 question 6:5,6,9 18:15,21,25 questions 2:17,20,21 3:21 4:4,6 6:4,6 18:20 quickly 15:18 R raised 18:11 rating 7:10 10:13,17 RCW 4:9,10,11 8:18 9:2,15,21 read 7:19 12:16,20 ready 9:3,23 10:18 11:19 16:13 17:5 18:6 19:11 20:1 reasons 6:13 receive 6:18 10:8,20
---	--	---	---

11:1,21 14:2 received 6:14 21:1 recognizing 15:18 record 4:14 15:5,8,9 20:22 recorded 5:19 recording 5:20 rectified 17:20 reference 9:2,21 references 8:24 9:12 11:12,16 19:23 Register 5:3 registered 7:11 11:5 regulations 2:14 related 3:7 remember 8:9 REMEMBERED 2:1 reminder 2:13 18:19 rephrase 6:5 reporter 2:3 5:18 22:7 represent 5:8 8:13 representative 5:24 8:13 12:4 14:6 18:19 representing 14:6,11 requested 9:10,14,25 require 12:21 required 7:6 10:17 11:11 requirement 11:13 16:5 requirements 7:4 10:7,15,19,25 11:17, 20 16:2,14,23 requires 8:19 9:16 requiring 13:1 residence 7:14 11:9 resolve 13:16 respond 6:9 response 6:14	responsibilities 17:25 18:2,4,8 retroactive 13:6 revises 2:24 robust 7:21 17:18 Rolonda 18:13,17 rule 8:3,4,17,24,25 9:6,7,8,12,19,20 10:3, 6,10,14,15,23,24 11:3, 10,12,16,18,24 13:24 14:21 15:24,25 16:4, 17,18,22,25 17:9,23, 25 18:3,14 19:3,5,8, 15,16,20,21 20:6,11 rulemaking 2:10 3:12 4:18,21 5:9,21 6:16 7:23 20:20 21:2 rules 2:7 3:7,11,13,14, 15,16,17,20,23 4:22 5:5 6:2,10,13,15,18 7:1,16,20 12:20,21,24 13:15 20:8 21:3 rules@esd.wa.gov. 3:8 6:11 20:25	short 13:15 Shorthand 22:6 sign 13:2 signed 6:18,25 single 17:14 skill 22:9 slash 3:11,12 solutions 14:16,17 speak 8:6,11 speaking 15:9 specialize 12:13 specific 2:15 7:4 Specifically 19:22 spell 5:22 8:12 12:3 14:4 18:18 spouses 7:11 11:5 staff 6:9 star 3:24 4:2 8:7,9,15 start 4:7 state 2:9 4:9 5:2,7,22 6:22 8:12 12:3,14,15 14:5 15:10 17:19,20 18:18 22:3,7 Statement 6:12 states 10:16 11:6 status 12:10,19 stenographer 14:5 submission 20:23 submissions 20:22 submit 20:24 subsection 19:23 substantiate 11:11 Substitute 3:1 4:23 6:23,24 7:9 summary 6:14 support 6:8 15:20 supporting 7:20 Supports 4:19 10:9, 21 11:2 16:21 17:7	T T-H-O-R-N-T-O-N 17:11 Tayler 2:3 22:6,11 team 2:20 5:10 Team's 3:24 Teams 2:2 5:19 8:7,15 teenager 17:16 temporary 7:13 11:8 terms 13:11 testify 8:11 testifying 8:14 testimony 4:18 5:23, 25 8:2 13:19 20:8,10, 15,16,20,21 21:4 text 7:19 12:16 thing 18:23 things 13:8 Thornton 17:10 thrown 17:12 THURSTON 22:4 time 11:12 16:9 timelines 16:23 title 3:14,16 5:12 9:2, 21 today 2:10 3:9 6:10 7:1,24 13:18,21 20:24 today's 2:23 3:15,22 8:16 10:5 17:24 19:4, 17 20:9 topic 8:16 10:5 17:24 19:4 topics 3:17 transcribed 5:18 transcript 5:20 22:8 transcription 5:22 true 14:1,13 22:8 Trust 4:19 10:9,21 11:2,22 16:21 17:8
--	--	---	---

Tuesday 2:1 types 11:4 U U.S. 7:12 understanding 7:21 United 11:6 unmute 3:23 4:2 8:6,9 unmuted 20:12 unnecessary 13:3 unpaid 16:12 V verify 10:16 11:11 18:12 version 3:10 veterans 7:9 10:12 view 3:10,20 visa 12:10,12,19 13:14 14:16 15:15 visas 7:13 11:7 voluntary 7:4,8 voted 6:23 W W-A-F-L-A 12:7 WA 2:14 4:20 6:18 7:3 9:2,21 19:10,22,25 20:20 WAC 8:18 9:4,8,24 10:7,19,25 11:20 16:1, 14,19 17:6 18:1,7 19:6,12,17 20:2 wacaresexemptions @esd.wa.gov 6:8 Wafla 12:7,8 15:12 wage 9:14 wages 19:18 20:3 wanted 14:12,23	Washington 2:9,24 4:9 5:2,7 6:22 7:15 11:9 12:14,15,23 13:2 14:10 17:20 22:3,7 web 5:4 weekly 2:18 window 3:24 8:7,15 17:14 wit 2:4 word 3:12 work 14:10 worked 19:18 20:3 worker 13:1 workers 7:13 11:8 12:9,16,22 13:4,13 17:20 written 3:6,8 6:9 12:24 13:17,20 20:21, 23,25 21:4 WSR 5:3 Y year 6:22 12:16 17:13	
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