

BEFORE THE EMPLOYMENT SECURITY DEPARTMENT

VERBATIM RECORD OF PROCEEDINGS
Thursday, August 27, 2020
Olympia, Washington
(VIA TELECONFERENCE)

APPEARANCES: (VIA TELECONFERENCE)

PRESIDING: MR. JOSHUA DYE
LEGISLATIVE & RULES COORDINATOR
P.O. Box 9046
Olympia, WA 98507-9046

ALSO PRESENT: SCOTT MICHAEL
REBEKAH O'HARA
ROBERT PAGE

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1 BE IT REMEMBERED that on Thursday, August 27,
2 2020, at 9:26 a.m. at Olympia, Washington, via
3 teleconference, before DIXIE J. CATTELL, Certified Court
4 Reporter, the following proceedings were had, to wit:

5

6 MR. JOSHUA DYE: Go on the record, please.

7 THE COURT REPORTER: Okay.

8 MR. JOSHUA DYE: Pursuant to the authority given
9 under Washington State law, this hearing is hereby
10 convened. For the record, this hearing is beginning at
11 10:05 a.m. on August 27, 2020. Due to the current pandemic
12 this hearing is being held via teleconference.

13 This hearing is convened to consider testimony
14 concerning three different rule-makings.

15 One, The COVID-19 unemployment account, submitted on
16 July 13, 2020, as WSR 20-15-067.

17 Second, Data privacy, submitted on July 21, 2020, as
18 WSR 20-15-137.

19 And, third, Public Records Request procedures
20 submitted on July 21, 2020, as WSR 20-15-139.

21 My name is Josh Dye and I am the Legislative and
22 Rules Coordinator for the Washington State Employment
23 Security Department's Legal Services.

24 I represent the Commissioner as hearing officer
25 presiding at this public rule-making hearing.

1 There are several staff from Employment Security
2 Department attending this hearing. And I would start with
3 Scott and ask you to introduce yourself, please.

4 MR. SCOTT MICHAEL: Yes, I am Scott Michael,
5 S-C-O-T-T M-I-C-H-A-E-L. I am Legal Services Coordination
6 Manager.

7 MR. JOSHUA DYE: Rebekah.

8 MS. REBEKAH O'HARA: I'm Rebekah O'Hara,
9 R-E-B-E-K-A-H O-H-A-R-A, and I'm the Chief Data Privacy
10 officer at Employment Security.

11 MR. JOSHUA DYE: And Robert?

12 MR. ROBERT PAGE: Robert, R-O-B-E-R-T P-A-G-E,
13 and I'm the Public Records Manager with Employment Security
14 Department.

15 MR. JOSHUA DYE: Thank you, Robert.

16 Please be advised that this hearing is being
17 transcribed and the transcript will become part of the
18 public official rule-making file.

19 This hearing is convened to receive written
20 submissions and oral testimony presented on the proposals.
21 **A Concise Explanatory Statement of the agency's reasons for**
22 **adoption of the rules, including a summary and a response**
23 **to all comments received for each rule, will be sent to all**
24 **requesting and commenting parties and placed in the**
25 **permanent rule-making files. The Concise Explanatory**

1 Statement for each rule will also be published on the
2 agency's rule-making webpage, which is
3 www.esd.wa.gov/newsroom/rulemaking.

4 For a brief explanation of the proposed rules:
5 First, the Covid 19 Unemployment Account. In the 2020
6 Regular Session, the Legislature passed Engrossed House
7 Bill 2965 which, among other things, created a COVID-19
8 unemployment account and appropriated funds into the
9 account for the purpose of reducing specified benefit
10 charges to eligible employers. The proposed rules are
11 necessary to order to establish which employers are
12 eligible to apply for benefit charge reduction, which
13 benefit charges are eligible to be reduced, and the process
14 for how employers can apply for benefit charge reduction.

15 Second, for Data Privacy. The rules implement public
16 disclosure and privacy rules in accordance with
17 requirements determined by Engrossed Senate Bill 5439 from
18 the 2019 Legislative session.

19 Third, Public Records Request Procedures. The
20 rulemaking adopts public disclosure and privacy rules.
21 These rules will update the existing procedures governing
22 public records requests made to the Department and clarify
23 the operation of the Department's public records office
24 under the Public Records Act.

25 We will now hear testimony from those logged in

1 attendance concerning the proposal. Participants will be
2 called by the phone number used to log into the conference
3 call. You may give comments to all three rules at the same
4 time or if you only have comments for specific rule-making,
5 that is up to you.

6 We will get started with guest number (206) 346-4000;
7 that is 346-4000. I would remind you please state and
8 spell your name and if you have an organization, please
9 tell us that as well.

10 (No response)

11 MR. JOSHUA DYE: One more call for 346-4000.

12 (No response)

13 MR. JOSHUA DYE: Okay. Hearing no comments from
14 that phone number, we will move to (206) 348-4468.

15 GUEST NUMBER (206) 348-4468: No comment here.

16 Thank you.

17 MR. JOSHUA DYE: Okay. With no comment, we will
18 move to 279-5281.

19 MS. LAURIE SMITH: My name is Laurie,
20 L-A-U-R-I-E, Smith from Heritage Distilling Company. I'm
21 just listening in to make sure I'm making good decisions to
22 take care of my company.

23 MR. JOSHUA DYE: Thank you, Laurie.

24 So we will move to 304-2375.

25 (No response).

1 MR. JOSHUA DYE: Another call for 304-2375.
2 (No response).
3 MR. JOSHUA DYE: Okay, hearing no comment, we'll
4 move to 670-3735.
5 (No response).
6 MR. JOSHUA DYE: Again, that's 670-3735.
7 (No response).
8 MR. JOSHUA DYE: Hearing no comment, we'll move
9 to 929-9633.
10 (No response).
11 MR. JOSHUA DYE: Second call for 929-9633.
12 (No response).
13 MR. JOSHUA DYE: Okay. Moving to 605-0396.
14 (No response).
15 MR. JOSHUA DYE: That's (360) 605-0396.
16 (No response)
17 MR. JOSHUA DYE: Hearing no comment, 753-5177.
18 MS. CATHERINE HOLM: Hello. Can you hear me?
19 MR. JOSHUA DYE: Yes, absolutely.
20 MS. CATHERINE HOLM: Great. Good morning. My
21 name is Catherine Holm, and I'm the legislative director
22 and legal counsel for the Washington Food Industry
23 Association. We sent in written comments a couple days
24 ago.
25 MR. JOSHUA DYE: Catherine, would you mind

1 spelling your name for the court reporter.

2 MS. CATHERINE HOLM: Yes. It is
3 C-A-T-H-E-R-I-N-E H-O-L-M.

4 All right. Can I go?

5 MR. JOSHUA DYE: Absolutely. I'm sorry. Go
6 ahead.

7 MS. CATHERINE HOLM: Oh, thank you.

8 So we had sent in written comments on Tuesday and
9 just wanted to touch base on one aspect of our comments.
10 The biggest thing that we are worried about is, in section
11 5(b), it states that an employer may not appeal the denial
12 of an application or release of benefit charges from
13 COVID-19 unemployment account. This is particularly
14 troublesome as employer should have the right to appeal if
15 it's determined that the employer should not receive
16 benefits. And if an unemployment claim is denied, the
17 employee has the right to appeal. Especially within the
18 last several months, and everything that has kind of
19 happened with ESD, we believe that transparency is needed
20 and denial should not be automatic, and so we request that
21 employers are given the opportunity to appeal.

22 The second thing we do want to ask for is that the
23 September 30th date is way too soon, especially since the
24 public hearing is today, and employers are expected to file
25 for the benefits by September 30th. We just think that is

1 very, very quick, and we think that the date should be
2 extended to give employers more time to ask for relief from
3 the benefit charges.

4 Thank you.

5 MR. JOSHUA DYE: Thank you so much. All right.
6 We will move to (360) 870-2914.

7 MR. BOB BATTLES: Bob Battles, B-A-T-T-L-E-S.
8 I'm with the Association of Washington Business, AWB. I
9 want to echo what Cat Holm mentioned regarding the right to
10 an employer appeal should there be a denial. One shouldn't
11 be eliminated the due process rights to be able to seek a
12 review, because while I appreciate we all think we're
13 perfect, nobody is perfect. Therefore, things can be
14 incorrectly decided and there should be appeal process.

15 I also want to agree with the September 30th deadline
16 date. We are still in the middle of a pandemic, in a
17 crisis, and businesses are still struggling with trying to,
18 you know, get into all their procedures and businesses, and
19 to sit there and have a new rule come out that essentially
20 will likely get adopted around September 4th and giving
21 less than 30 days even to file for it when businesses
22 aren't even necessarily open and people aren't necessarily
23 in all those offices at once, this kind of goes back to the
24 notice requirement. I did get earlier notice, so thank
25 you.

1 The other thing I wanted to comment is something that
2 I think the Small Groceries Washington Industry Association
3 commented on, or not Small Groceries, I'm sorry, the Retail
4 Association, commented on regarding the complicated
5 paperwork. The paperwork is very extensive. This also
6 kind of goes to the September 30th of requiring folks to
7 fill out very extensive and complicated paperwork and
8 streamlining that paperwork, to the extent possible, should
9 be done by the Department.

10 Those are my comments. Thank you.

11 MR. JOSHUA DYE: Thank you, Bob.

12 Moving to 998-1752.

13 (No response).

14 MR. JOSHUA DYE: 998-1752.

15 MS. KENDRA ZERN: Good morning. I'm just here
16 to hear the comments from other employers to see where the
17 issues are. Clearly this is a -- oh, you wanted my name?
18 Sorry. Kendra. I'm sorry. K-E-N-D-R-A Z-E-R-N. I'm on
19 behalf of Community Home Health and Hospice, Southwest
20 Washington.

21 MR. JOSHUA DYE: Okay. Thanks for joining us,
22 Kendra. Did you have any other further comments?

23 MS. KENDRA ZERN: No, I don't. I do concur with
24 the previous comments that the process is very -- it's
25 confusing and much more difficult than it likely needs to

1 be.

2 MR. JOSHUA DYE: All right. Thank you for your
3 comment.

4 Moving on to (425) 681-0110.

5 (No response).

6 MR. JOSHUA DYE: (425) 681-0110.

7 (No response).

8 MR. JOSHUA DYE: Hearing no comment, we will
9 move to (509) 664-4934.

10 MR. SHAUN SEAMAN: This is Shawn Seaman with
11 Chelan County PUD. I will not be making comments, just
12 listening in, but for the record my name is Shaun,
13 S-H-A-U-N, Seaman, S-E-A-M-A-N, again with Chelan County
14 PUD.

15 MR. JOSHUA DYE: All right. (973) 597-8398.

16 (No response).

17 MR. JOSHUA DYE: Again, that's 8398.

18 (No response).

19 MR. JOSHUA DYE: Is there anyone on the call
20 that has not -- that I have not called on that would like
21 to give testimony that would like to do so now?

22 (No response).

23 MR. JOSHUA DYE: Court reporter, can we go off
24 the record for a moment?

25 THE COURT REPORTER: Okay.

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(Recessed at 10:20 a.m.)
(Reconvened at 10:20 a.m.)

MR. JOSHUA DYE: Is there any further testimony concerning the proposed rule-making before us that has not had the opportunity to speak?

(No response).

MR. JOSHUA DYE: All right. Hearing none, this hearing was convened to consider testimony on proposed rules concerning the COVID-19 unemployment account, data privacy, and public records request procedures.

All oral testimony presented at this hearing and written submissions will become part of the official record. The deadline for submitting written comments was August 26, 2020. The final decision regarding adoption of the proposed rule-making will be made after all testimony and written comments have been considered.

On behalf of the Commissioner, thank you for participating in this hearing.

This hearing is adjourned at 10:21 a.m. on August 27, 2020.

And, with that, Dixie, we can go off the record.

(Concluded at 10:21 a.m.)

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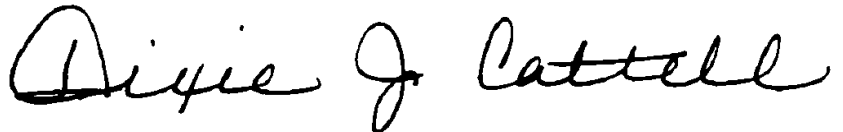
C E R T I F I C A T E

I, DIXIE J. CATTELL, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, do hereby certify:

That the foregoing VERBATIM RECORD OF PROCEEDINGS was taken before me and completed on the 27th day of August, 2020, and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of the proceedings;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

IN WITNESS HEREOF, I have hereunto set my hand this 31st day of AUGUST, 2020.



Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346

<hr/> <p style="text-align: center;">1</p> <hr/> <p>10:05 2:11 10:20 11:1,2 10:21 11:19,22 13 2:16 19 4:5</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>20-15-067 2:16 20-15-137 2:18 20-15-139 2:20 2019 4:18 2020 2:2,11,16,17,20 4:5 11:14,20 206 346-4000 5:6 206 348-4468 5:14,15 21 2:17,20 26 11:14 27 2:1,11 11:19 279-5281 5:18 2965 4:7</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 8:21 304-2375 5:24 6:1 30th 7:23,25 8:15 9:6 346-4000 5:7,11 360 605-0396 6:15 360 870-2914 8:6</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>425 681-0110 10:4,6 4th 8:20</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5(b) 7:11</p>	<p>509 664-4934 10:9 5439 4:17</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>605-0396 6:13 670-3735 6:4,6</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>753-5177 6:17</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8398 10:17</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>929-9633 6:9,11 973 597-8398 10:15 998-1752 9:12,14 9:26 2:2</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 2:2,11 11:1,2,19, 22 absolutely 6:19 7:5 accordance 4:16 account 2:15 4:5,8,9 7:13 11:9 Act 4:24 adjourned 11:19 adopted 8:20 adoption 3:22 11:14 adopts 4:20 advised 3:16 agency's 3:21 4:2 agree 8:15 ahead 7:6 appeal 7:11,14,17,21 8:10,14</p>	<p>application 7:12 apply 4:12,14 appropriated 4:8 aspect 7:9 Association 6:23 8:8 9:2,4 attendance 5:1 attending 3:2 August 2:1,11 11:14, 19 authority 2:8 automatic 7:20 AWB 8:8</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B-A-T-T-L-E-S 8:7 back 8:23 base 7:9 Battles 8:7 beginning 2:10 behalf 9:19 11:17 benefit 4:9,12,13,14 7:12 8:3 benefits 7:16,25 biggest 7:10 Bill 4:7,17 Bob 8:7 9:11 Business 8:8 businesses 8:17,18, 21</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C-A-T-H-E-R-I-N-E 7:3 call 5:3,11 6:1,11 10:19 called 5:2 10:20 care 5:22</p>	<p>Cat 8:9 Catherine 6:18,20,21, 25 7:2,7 CATTELL 2:3 Certified 2:3 charge 4:12,14 charges 4:10,13 7:12 8:3 Chelan 10:11,13 Chief 3:9 claim 7:16 clarify 4:22 comment 5:15,17 6:3, 8,17 9:1 10:3,8 commented 9:3,4 commenting 3:24 comments 3:23 5:3,4, 13 6:23 7:8,9 9:10,16, 22,24 10:11 11:13,16 Commissioner 2:24 11:17 Community 9:19 company 5:20,22 complicated 9:4,7 Concise 3:21,25 concluded 11:22 concur 9:23 conference 5:2 confusing 9:25 considered 11:16 convened 2:10,13 3:19 11:8 Coordination 3:5 Coordinator 2:22 counsel 6:22 County 10:11,13 couple 6:23 court 2:3,7 7:1 10:23, 25</p>
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