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TELEPHONIC PUBLIC HEARING  
PROPOSED RULEMAKING CHANGES TO  
CR-102 HOURS OF AVAILABILITY WSR 20-08-034  
AND  
CR-102 MOTIONS TO VACATE WSR 20-08-35

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May 7, 2020

DIXIE CATTELL & ASSOCIATES  
COURT REPORTERS & VIDEOCONFERENCING  
(360) 352-2506

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CR-102 HOURS OF AVAILABILITY WSR 20-08-034  
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APPEARANCES :

FOR EMPLOYMENT  
SECURITY DEPARTMENT  
(Via Telephone):

MR. JOSHUA DYE  
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1 BE IT REMEMBERED that on Thursday, May 7, 2020, at  
2 10:00 a.m., via telephone, before REBECCA S. LINDAUER,  
3 Certified Court Reporter, in and for the State of  
4 Washington, the following proceedings were had, to wit:

5  
6 MR. DYE: Pursuant to the authority given under  
7 Washington State law, this hearing is hereby convened. For  
8 the record, this hearing is beginning at 10:00 a.m. on  
9 May 7, 2020. Due to the governor's "Stay Home, Stay  
10 Healthy" order, this hearing is being held via  
11 teleconference. This hearing is convened to consider  
12 testimony considering both hours and availability and  
13 motions to vacate default orders.

14 Notice of this hearing was published in the Washington  
15 State Register as WSR 20-08-034 for hours of availability  
16 and WSR 20-08-035 for motions to vacate, and sent to  
17 interested parties via the Department's rulemaking  
18 distribution list.

19 My name is Josh Dye, and I am the legal services  
20 legislation and rules coordinator for the Washington  
21 Employment Security Department. I represent Commissioner  
22 Suzi Levine as hearing officer presiding at this public  
23 rulemaking hearing. We have one other agency personnel with  
24 us, Scott Michael, who is the legal services manager.

25 If we have anyone who signs in and wishes to testify,

1 we'll be calling them based on their phone number. When you  
2 are called to testify, please state your name, organization,  
3 and phone number and address or email address for the  
4 record. Also, please indicate which rule you would like to  
5 address. You may offer testimony on either rule or both  
6 rules. Also, please spell your name when you announce it  
7 for the record.

8 Please be advised that this hearing is being  
9 transcribed, and the transcript will be part of the official  
10 rulemaking file. This hearing is convened to consider  
11 written submissions and oral testimony presented on the  
12 proposals.

13 A concise explanatory statement of the agency's reasons  
14 for adoption of the rules, including a summary and response  
15 to all comments received for each rule, will be sent to all  
16 requesting and commenting parties and placed in the  
17 permanent rulemaking files. The concise explanatory  
18 statement for each rule will also be published on the  
19 agency's rulemaking web page which is [www.esd.wa.gov/  
20 newsroom/rulemaking](http://www.esd.wa.gov/newsroom/rulemaking).

21 For a brief explanation of the proposed rules: for  
22 hours of availability, in order to qualify for unemployment  
23 benefits, claimants are required to be able and available  
24 for work. This rulemaking would redefine the hours  
25 claimants must be available for work.

1           For motions to vacate, when an appellant receives an  
2 order of default, they are able to make a motion to vacate  
3 that order. Under current rules motions are filed with the  
4 department and then referred to the Office of Administrative  
5 Hearings. This rulemaking would allow appellants to file  
6 those motions directly with the Office of Administrative  
7 Hearings.

8           We will now take testimony from those logged in for  
9 attendance concerning the proposals, and at this time we do  
10 not have anyone who has declared they wish to testify or in  
11 attendance; so we will go off the record for -- to see if  
12 anybody else comes in.

13           MS. PAXTON: This is Anne Paxton with the  
14 Unemployment Law Project.

15           MR. DYE: Oh. I missed it.

16           MS. PAXTON: I did call in. Maybe it was -- it  
17 was just before you started talking.

18           MR. DYE: Oh, no. So, Anne, if you would, just  
19 give your name, your title -- spell your name -- your  
20 organization, and then you may have the floor.

21           MS. PAXTON: Great. So my name is Anne Paxton,  
22 A-n-n-e P-a-x-t-o-n. I'm a staff attorney with the  
23 Unemployment Law Project, and I'm here to speak in support  
24 of proposed rule WSR 20-08-034. Is that correct?

25           MR. DYE: Yes.

1 MS. PAXTON: Okay. The Unemployment Law Project  
2 believes the proposed rule provides a needed update of  
3 archaic and overbroad language which places difficult  
4 conditions on unemployed workers seeking a job. It also  
5 adapts state law to family and workplace realities. In  
6 addition, it complies with federal law in adopting policies  
7 supported by the U.S. Department of Labor, and it carries  
8 out the explicit purpose of Title 50 RCW to ease the burden  
9 of unemployment on workers.

10 ULP, the Unemployment Law Project, attorneys have  
11 encountered hundreds of instances in which inflexible hours  
12 of availability rules have led to denial of benefits to  
13 claimants who were able, available, and actively seeking  
14 full-time work. Other states' rules show that availability  
15 standards responsive to reasonable work shift limitations  
16 are practical. In 25 other states claimants are not  
17 disqualified for unemployment benefits if they leave or  
18 refuse work due to compelling family circumstances.

19 The Unemployment Law Project believes -- excuse me.  
20 The Unemployment Law Project believes that Washington State  
21 unemployment insurance law, since its inception, has only  
22 required that unemployed workers accept suitable work, not  
23 simply any working conditions desired by the employer.

24 With 40 percent of Washington's workforce in jobs that  
25 are classified as having customary hours of 24/7, the

1 current wording in Washington Administrative Code  
2 192-170-119 that claimants must be available for all hours  
3 customary to the occupation and be available day and  
4 evening, even if they've only worked days in the past, if  
5 their occupation requires both day and evening hours, is an  
6 outdated requirement that few workers can reasonably comply  
7 with.

8 ULP wishes to thank the Employment Security Department  
9 for developing this important proposed rule which will aid  
10 employers by helping many workers continue in the workforce  
11 and ease the hardship of certain availability requirements  
12 on working families as well as strengthen the state's  
13 economy. Thank you.

14 MR. DYE: Thank you, Anne.

15 And so I don't see anybody else logged in; so we will  
16 now go off the record --

17 MS. PAXTON: Okay.

18 MR. DYE: -- to see if anybody else logs in and  
19 wishes to testify. Thank you very much.

20 MS. PAXTON: And the record will be held open  
21 until 11:00?

22 MR. DYE: No. Until 10:30, if no one else logs  
23 in. 10:25 is when we come back on --

24 MS. PAXTON: Thank you.

25 MR. DYE: -- to do our closing.



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(Recessed at 10:07 a.m.)

(Reconvened at 10:25 a.m.)

MR. DYE: I'm resuming. This is Josh Dye with the Employment Security Department. Just checking, is there any further testimony concerning either of the proposed rules before us before I can close the hearing?

Hearing none, this hearing was convened to consider testimony on proposed rules concerning both hours of availability and motions to vacate default orders. All oral testimony presented at this hearing and written submissions will become a part of the official record. The deadline for submitting written comments was May 6, 2020. The final decision regarding adoption of the proposed rulemaking will be made after all testimony and written comments have been considered.

On behalf of the commissioner, thanks for participating in this hearing. This hearing is adjourned at 10:26 a.m. on May 7, 2020. Thank you.

(Concluded at 10:26 a.m.)

C E R T I F I C A T E

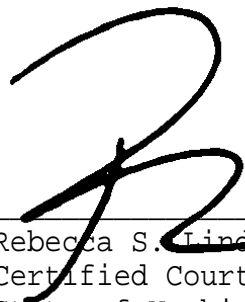
I, REBECCA S. LINDAUER, a Certified Court Reporter in and for the State of Washington, residing at Lacey, do hereby certify:

That the foregoing telephonic public hearing was taken before me and completed on the 7th day of May 2020, and thereafter transcribed by me by means of computer-aided transcription; that the public hearing 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 any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith emailing the public hearing to MR. JOSHUA DYE.

IN WITNESS HEREOF, I have hereunto set my hand this 8th day of May 2020.



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Rebecca S. Lindauer, CSR#2402  
Certified Court Reporter, in and for the  
State of Washington, residing at Lacey.

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