

PROPOSED RULEMAKING HEARING

DATE: 2-26-19

TIME: 8:00 A.M.

PLACE: Employment Security Department  
212 Maple Park Avenue SE  
Olympia, WA 98501

PRESENT: Scott Michael, Esq.

Legal Services Coordination Manager

Mariana Hernandez,

Employment Security Department, policy unit

Erin Blades,

Employment Security Department, policy unit

Anne Paxton,

Unemployment Law Project

1 MR. MICHAEL: Good morning, everyone. My name is  
2 Scott Michael. I am the rulemaking coordinator for the  
3 Employment Security Department.

4 Pursuant to the authority given under Washington  
5 State law, this hearing is hereby convened.

6 For the record, this hearing is beginning at  
7 8:01 a.m. on February 26th, 2019, at 212 Maple Park Avenue  
8 in Olympia, Washington. This hearing is convened to  
9 consider testimony concerning the rule related to modifying  
10 requirements for claimant directives to participate in  
11 reemployment services. Notice of this hearing was  
12 published in the Washington State Register January 23rd,  
13 2019, as number WSR19-03-165 and sent to interested  
14 parties.

15 I represent commissioner Suzi LeVine as hearing  
16 officer presiding at this public rulemaking hearing.

17 There are a couple staff here from the Employment  
18 Security Department attending this hearing.

19 Could you please introduce yourselves.

20 MS. HERNANDEZ: Mariana Hernandez with the policy  
21 unit.

22 MS. BLADES: Erin Blades with the policy unit.

23 MR. MICHAEL: If you have not already done so,  
24 please sign the hearing attendance log. Be sure to provide  
25 all information requested and fill in all of the blanks.

1 The attendance log is kept as a permanent record of this  
2 hearing.

3 Please be advised that this hearing is being  
4 transcribed, and the transcript will become a part of the  
5 official rulemaking file.

6 The hearing is convened to consider written  
7 submissions and oral testimony presented on the proposal.  
8 A concise explanatory statement of the agency's reasons for  
9 adoption of the rule, including summary and response to all  
10 comments received, will be sent to all requesting and  
11 commenting parties and placed in the permanent rulemaking  
12 file. It will also be published on the agency's web page,  
13 which is [www.esd.wa.gov/newsroom/rulemaking](http://www.esd.wa.gov/newsroom/rulemaking).

14 I will now provide a brief explanation of the  
15 proposed rule. The Department is amending the rule  
16 relating the claimant directives to participate in  
17 reemployment services under RCW 50.20.101 (1)(e).

18 As set forth in the Unemployment Insurance  
19 Program letter No. 3-17, the United States Department of  
20 Labor strongly encourages state unemployment agencies to  
21 implement an automated scheduling service to allow  
22 claimants to self-schedule the dates they will participate  
23 in reemployment services.

24 The goal of the automated scheduling service is  
25 to increase the number of claimants who participate in

1 reemployment services and thereby return to work sooner and  
2 thereby claim fewer weeks of unemployment benefits.

3 The Employment Security Department has received a  
4 federal grant for purposes of adopting an automated  
5 scheduling service and is in the process of creating that  
6 system. Part of creating that system is adopting new rules  
7 that reflect the fact that claimants will be allowed to  
8 self-schedule the dates they will receive reemployment  
9 services.

10 The regulation itself is simply an amendment to  
11 WAC 192-140-090, which reflects the changes necessary to  
12 show that claimants will be receiving directives to  
13 schedule their own reemployment services instead of  
14 reemployment services being scheduled for them. And the  
15 rule sets forth the consequences for claimants who either  
16 fail to schedule a date for reemployment service or fail to  
17 attend the date they scheduled.

18 The rule also exempts persons participating in a  
19 training program approved by the commissioner from  
20 receiving directives to participate in reemployment  
21 services as is suggested in Unemployment Insurance Program  
22 letter No. 3-17.

23 The Department has determined that changes to  
24 other rules or statutes would not achieve the same  
25 regulatory objective. The language of the proposed rule

1 has been shared with the United States Department of Labor.  
2 There are no other state agencies that deal with the  
3 subject matter of this regulation.

4 The Department has chosen a reasonable,  
5 cost-effective manner of achieving the regulatory objective  
6 of the rule. There are no anticipated environmental  
7 consequences associated with the rule.

8 In the preliminary cost-benefit analysis, the  
9 Department stated that the costs of the rule are being  
10 funded by a Federal Grant. The Department also stated that  
11 anticipated employers would not incur any costs as a result  
12 of this rule and that the increased participation and  
13 reemployment services would result in fewer weeks of  
14 unemployment claims, which would actually reduce costs to  
15 employers.

16 Specifying performance standards is not  
17 appropriate for the rule. The proposed regulation does not  
18 require a small business economic impact statement as the  
19 Department does not anticipate any adverse economic impacts  
20 on any employers, large or small. Input was solicited from  
21 stakeholders during the development of the proposed  
22 regulation.

23 We will now hear testimony from those logged in  
24 attendance concerning the proposal. Please state your  
25 name, spelling your last name, and if you are here on

1           behalf of a company or organization, who you represent.

2                   Ms. Paxton, I believe you're scheduled here  
3           first.

4                   MS. PAXTON: Thank you.

5                   My name is Anne Paxton. I'm a staff attorney  
6           with the Unemployment Law Project.

7                   And I want to thank the Department for developing  
8           this rule. I think it's very important. It's going to  
9           help a lot of people.

10                   Our comments, I think we submitted them earlier.  
11           I think you have -- I'm not sure if you save all comments  
12           until the end to make your changes in the draft or if these  
13           have already been addressed. They're just mainly  
14           grammatical issues, just parallelisms that didn't work.  
15           And in a couple of areas, there were a couple of sections  
16           that were a little unclear. The wording was a little  
17           unclear.

18                   MR. MICHAEL: Okay.

19                   MS. PAXTON: Do you want me to name those in  
20           detail or...?

21                   MR. MICHAEL: This is your opportunity --

22                   MS. PAXTON: Okay.

23                   MR. MICHAEL: -- to provide testimony for the  
24           record. If you have a written statement you want to  
25           submit, we can certainly take that here as well.

1 MS. PAXTON: Okay. I will also submit that.

2 But I did want to ask you about -- in the draft  
3 rule, line 5, it says "The commissioner may direct you in  
4 writing." And that was unclear to me because of the  
5 automatic scheduling aspect of the rule. We wondered if it  
6 would actually be an online message. Is that an  
7 interpretation of writing as well as, you know, something  
8 that is on paper? That might create problems with  
9 claimants that have -- that lack computer access or  
10 computer skills. Does it mean a notice in the mail? I  
11 just -- I just wondered if that could be a little bit more  
12 specific.

13 MR. MICHAEL: So I'm here to receive your  
14 comments.

15 MS. PAXTON: Yeah, okay. Okay.

16 MR. MICHAEL: So say what you will, and then we  
17 can address what -- any of your comments when we provide  
18 the concise explanatory statement.

19 MS. PAXTON: Okay.

20 Our thought was that, given the title of the  
21 draft, it might be appropriate to explain in some -- or  
22 have some kind of a -- kind of -- somewhat of a description  
23 of what automated scheduling actually means. Does it mean  
24 you can only do it on a computer? Our concern might be  
25 with people without a computer or lacking skills. We see a

1 lot of people, for example, fishermen from Alaska that  
2 don't have access to a computer, and many others. So I'm  
3 just -- that's just one suggestion.

4 I think the other one I wanted to mention is in  
5 line 19. And I will submit this in writing too. It refers  
6 to "similar services," and it's not clear. Similar to  
7 what? Whether it refers to a training program that's  
8 similar to a commissioner-approved training or something  
9 else from the context.

10 It appears to us that the way it's written right  
11 now, that cancels out the relevance of commissioner  
12 approval, but I'm not sure of that. I wondered how you  
13 would define a training program that is similar to a  
14 commissioner-approved training program but is not  
15 commissioner-approved. So in the context, it just seemed  
16 unclear.

17 And that really is all, except for, you know, a  
18 couple of very minor grammatical issues that I'll submit in  
19 writing. I wanted to tell you how much we appreciate the  
20 chance to comment.

21 MR. MICHAEL: Okay. Thank you, Ms. Paxton.

22 Currently, there is no one else signed in to  
23 testify on the rule.

24 At this time, the rulemaking hearing is scheduled  
25 to last until 9:00 a.m. It is now 8:11 a.m. We will



1 continue to remain open until 9:00. If no one else comes  
2 to sign in and testify, then we will close the rulemaking  
3 hearing at 9 a.m.

4 If someone -- sorry. If someone does come in, we  
5 will reopen the record. But for now, we'll go off the  
6 record until someone else is ready to come in and testify.

7 (Pause in the proceedings.)

8 MR. MICHAEL: We are back on the record.

9 Ms. Paxton has submitted some written comments  
10 that she would like to be part of the rulemaking file.

11 Can we please have that marked and made part of  
12 the file.

13 (Exhibit 1 marked.)

14 If there's nothing else, we will go off the  
15 record pending anyone else signing in and testifying.

16 (Pause in the proceedings.)

17 MR. MICHAEL: It is now 8:59. We are back on the  
18 record.

19 No one else has signed in to testify at this  
20 rulemaking hearing other than Ms. Paxton.

21 This hearing was convened to consider testimony  
22 on proposed rules clarifying requirements for educational  
23 employees to qualify for unemployment benefits. All oral  
24 testimony presented at this hearing and written submissions  
25 will become part of the official record. The deadline for

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submitting written comments is today, February 26th, 2019.

A final decision regarding adoption of this proposed rule will be made after all testimony and written comments have been considered.

On behalf of commissioner Suzi LeVine, thank you for participating in this hearing.

This hearing is adjourned at 9:00 a.m. on February 26th, 2019.

(End of proceedings.)

From: Anne Paxton anne@ulproject.org  
Subject: Comments - Automatic Scheduling of Reemployment Services - Preliminary Draft Rules for Stakeholder Feedback  
Date: January 18, 2019 at 5:08 PM  
To: rules@esd.wa.gov  
Bcc: Anne Paxton anne@ulproject.org



## Comments by Anne Paxton, Staff Attorney, Unemployment Law Project Automated Scheduling of Reemployment Services - Preliminary Draft Rules for Stakeholder Feedback

To: Employment Security Department  
From: Anne Paxton, Staff Attorney, Unemployment Law Project



Tia B. Reidt, RPR, CCR #2798

Thank you for developing these draft rules. I believe it will be very helpful for people to be able to schedule an appointment for reemployment services, in place of being assigned a time and date.

Following are a few comments about this draft.

1. In line 5, "The commissioner may direct you in writing" is unclear given current messaging practices and the term "automated scheduling." Would it actually be an online message to the claimant or an email? That would create problems for some claimants without computer access or without computer skills. Or does it mean you will get a notice in the mail? If so, it might be better to say that specifically. Given the title of the draft rule, it might also be good to explain what you mean by automated scheduling.

2. Line 13, "In all such cases, your ability to or availability for work may be questioned." seems like an unnecessary addition to (1) (d)

• If you wish to retain that sentence, it has faulty parallelism. I suggest rephrasing the sentence as "In all such cases, your ability to work or your availability for work may be questioned."

3. Line 18 should have a return after the ";or" for the separate line (d)

4. In line 18 (2)(c)5. In line 18 —(2)(c) and (d)— the phrasing is awkward

making it unclear.

First, the first word of (c) should be "Are" as in "Are participating"

Does "similar services" in line 19 refer to a training program similar to a commissioner-approved training? That seems like it could mean almost any training program. The current wording cancels out the relevance of commissioner approval. How would you define a training program that is similar to a commissioner-approved training program but is not commissioner approved?

Because of the way it's written, right now I would read it to mean:

- (c) Are participating in a training program or are scheduled to participate in such a program; or
- (d) Have completed a training program within the previous year.

I suggest rewording if you mean something other than that.

We appreciate the opportunity to review and comment on the draft.

Best regards,

Anne Paxton  
Staff Attorney  
Unemployment Law Project  
206-441-9178 ext. 114