Shared Work Rules Public Meeting, 8/7/13

EMPLOYMENT SECURITY DEPARTMENT
STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS
of
SHARED WORK RULES PUBLIC MEETING

Date and Location
August 7, 2013          Employment Security Department
Wednesday, 9:00 a.m.    GMAP Room
212 Maple Park
Olympia, Washington

BE IT REMEMBERED, that a Shared Work Rules Public
Meeting was held on the date and location as set forth
above. The Employment Security Department was represented
by Juanita Myers, Rules Coordinator.

WHEREUPON the following proceedings were held, to
wit:

Reported by:
Cheryl A. Smith, CCR, CVR
(License #3017)

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Welcome and Introductions

MS. MYERS: My name is Juanita Myers. I'm the rules manager for the Unemployment Insurance Division. And we're going to -- just a reminder for those of you who are on the phone, we do have a court reporter here so your comments will be recorded and be part of a transcript of this hearing.

Can I ask that those of you on the phone mute your phones when you're not speaking so we don't hear your comments or dog barking?

I'm going to go ahead and start around the room and ask people to introduce themselves and then I'll ask for you on the phone. And please spell your last name -- well, spell your first and last -- spell your last name, your first name if you have an unusual name or an unusual spelling so our court reporter has those.

Let's go ahead and get started. Larry?


MS. WELLS: My name is Robyn Wells. Last name is W-E-L-L-S. I am the manager of the experience rating and benefit charging unit with Employment Security.

MS. GLACKEN: My name is Donna Glacken, G-L-A-C-K-E-N. And I'm a lead worker in the shared work unit.

MS. JOHNSON: My name is Judy Johnson. I'm the Unemployment Insurance legislator coordinator.

MS. BROWN: I'm Cheryl Brown. I'm the shared work supervisor with Employment Security Department. Last name Brown, B-R-O-W-N.

MS. MYERS: Can we go ahead and have those people on the phone introduce themselves again?

MS. DECKER: My name is Miwa Decker, M-I-W-A, D-E-C-K-E-R. I'm from Gavco Industries. I'm the corporate accountant.

MS. MYERS: And that was Gavco Industries?

MR. DECKER: Yes.

MS. MYERS: Okay. I know there are others on the phone.


MS. MYERS: Okay. Thank you. And I believe there was one more person on the phone.
Okay. That individual may have terminated the call.

MS. KRUGER: I'm sorry. I had my phone on mute.

Linda Kruger, Estate Homes. And we're a remodeling and design firm up north in Seattle. And the spelling of my last name of Kruger is K-R-U-G-E-R.


MS. MYERS: Okay. Thank you. I'm so sorry I passed you over.

MS. HANDELAND: No worries.

MS. MYERS: What we would ask is that when you speak, because we do have a court reporter in the room, that you would say your name again so that particularly for those people on the phone that she can identify who is speaking and record that accurately in her notes. And please speak one at a time so she can get accurate notes and we can keep track of what you're saying.

Review EHB 1396

MS. MYERS: I'm going to go through very briefly the changes in the legislation that we are looking at and then...
go through the rules. There are two types of changes in
the rules we're making: Some mostly technical changes
just to comply with the changes in state law and then
there are some policy questions we want to look at. We're
not advocating either way on any of these policy questions
but we wanted -- because we're opening the rules up for
possible amendment, we wanted to get your input as to
whether these policy changes should be implemented.

Okay. Any questions? Okay. Let's go ahead and get
started.

I don't know if you have a copy of the legislation in
front of you. The changes are not significant -- or not
hugely significant.

For the changes from our previous law, we -- the bill
now allows individuals who are part-time workers to
participate in the program. Previously they had to be
full-time. It requires that the plan has at least two
workers affected. Our law was changed a couple years ago
to allow plans for workers -- plans with only one worker
affected. We've had to change that to two.

The employer has to notify us on their application
how many positions are being saved as a result of the
shared work plan and then there are some other more minor
changes to the rule as far as -- and there are also some
changes to the funding mechanism of the bill. There's
going to be a period of time back to June -- what is it --
July 1st of 2012 where employers who are participating
will be reimbursed by the federal government -- or the
State will be reimbursed by the federal government, so
companies participating in the plan will not be charged
their cost for participating.

The employees have to be employed on a permanent
basis. Temporary employees cannot participate. They
added some language to the legislation that says employers
have to retain certain benefits: health benefits,
retirement benefits, vacation, holidays and sick leave.
That was in there, the old law, but it also specifies now
that if they reduce those benefits for people who are not
in the plan, that they can also now reduce benefits
equally for people who do participate so they don't have a
two-tier -- they don't have to keep a two-tier where
they've reduced benefits for other employees but had to
maintain higher benefits for shared work employees. So
that is a change also.

MS. MYERS: I'm going to go ahead now and walk
through the rule-making changes. You should have a copy.
It's called Chapter 192-250 WAC. And most of the changes
as I -- well, the changes that I'm going to go through briefly are required by the legislation. And then we're going to come back, you see a couple sections in there, I think there are three where we've got -- where it says review policy, and we'll come back and discuss those because I think that will be where we spend the majority of our time.

Under the first section where it says "definitions," we've eliminated the definition of full-time employment because now part-time employees can participate in the plan. We've added a placeholder for what we mean by "permanent basis" and what we mean by "regular number of hours of work" because we -- well, we wanted your input on what you think "permanent" might be. Is it somebody who worked X number of hours? Do they work particularly well, we can't have seasonal employees, but is it somebody who works regularly one month on and one month off? And is that their regular hours of work? Well, it would be both. Is that permanent? Is that regular number of hours of work? So I'd be interested in any of your thoughts on those.

MS. KRUGER: At this time?

MS. MYERS: Yes.

MS. KRUGER: We are a remodeling and design firm, and permanent to us could mean somebody that has been with the
company, well, for a number of years. And remodeling, you may have ten jobs at once and then one job and then three jobs and then six jobs. So a regular employee kind of flows with the work at hand. So they could be kind of coming and going and working more hours and less hours, but they're always there for it.

MS. MYERS: But they're not on a seasonal basis. It depends on the number of contracts you have.

MS. KRUGER: That's correct.

MS. MYERS: Okay. Any thoughts on what "regular number of hours of work" means or should mean? Because that could -- I know that can fluctuate in certain companies. They might work 10 hours one week, 45 or 50 the next week. Do you have any suggestions as what we should put in there as a definition? No? Okay.

Well, then we'll go ahead and see what we come up with, and when we send these draft rules out for you to look at, you'll have an opportunity to review them, to review the definitions and then comment on. Sometimes it's easier to comment on something that's already there.

The second section, WAC 192-250-010, we're only making one change in paragraph 2. Where it says the employer may reduce an employee's full-time work, that's stricken and we put "usual," but actually we think it should be "regular" because that's what we're defining in
the WAC, the regular hours of work. So we'll take another
look at that. But we have no additional changes for that
particular rule.

The next one, 192-250-015, is just a technical
change. The number that's assigned to the employer is now
going to be called an Employment Security Department
number as opposed to an ESD reference number. So that's
just a technical change just to -- it's not required by
the legislation. It's required by in-house policy changes
or procedure changes.

The next rule, 192-250-020, in paragraph 1 we made a
minor change on that one because an employer may have an
approved deferred payment contract on file, but what we're
looking at is that they need to be current on the plan.
So it does no -- it has no meaning to have them -- to say
that they have to have a plan on file if we're also not
requiring that they be current in their payments on that
defered payment plan. So that's just kind of a cleanup
to clarify what our policy is. And again, in Subsection
(2) we just changed the name to ESD number as opposed to
reference number.

The next rule, 192-250-025, talks about the fringe
benefits. The employers have to maintain their health
benefits as though their weekly benefits had not been
reduced. Again, in the statute it allows them to reduce
those benefits for their shared work employees if they
also reduce them for the people who are not in the shared
work plan. They have to continue to provide employees
with defined contribution and defined benefit pension
plans if they do that before the plan is approved, and
those defined contribution and benefit pension plans are
those now covered by the Internal Revenue Service code
rather than the ERISA.

Subsection (2)(c) is just cleanup of the language and
adding sick leave under the same terms and conditions as
opposed to on the same basis. Because again, under the
same terms and conditions allows them to reduce if they
reduce them for the non-shared work employees. And the
other benefits that are offered to your employees like
long-term disability, life insurance, et cetera, they're
optional. They don't have to continue -- you as employers
do not have to continue to provide these benefits.
They're voluntary if you do.

Subsection (5), again, is just a cleanup of language
as opposed to trying to -- answering yes to plan
modifications, et cetera. We just are answering the
question with a yes, you may modify your application to
add additional employees. It's just, again, trying to
make the language a little more clear for -- to make --
well, we have a goal of trying to make our rules as
readable as possible. So I don't know if we've achieved that, but I hope we have with these rules.

(6), again, we're just changing it to "usual hours of work."

(7) refers to the shared work payments report as opposed to report of shared work payments. Again, just language cleanup.

I'm going to come back to Subsection (8) because that's a review of policy and we'll have that as soon as we complete our review of the remaining sections.

On page 6 of these rules, again, we just have a change. The newly (2), again, to ESD number and taking out the word "reference."

The changes to section 192-250-030 are, again, our policy changes we'll come back and discuss in just a few minutes.

The Section 192-250-035, we've stricken the language about what are the requirements for participating in the employer plan. Where it says that you have to have worked at least 460 hours of work with this employer in the calendar quarter, that's no longer a requirement because part-time -- that referred to full-time employees, and because part-time employees can now participate, we struck that section.

And then the remaining sections are just renumbered.
On the next page, 9, we've stricken what is there as (7): Is there a minimum or maximum number of hours I can work in a week? Again, we've deleted that because both full-time and part-time workers can participate.

And the next two rule-makings are more policy changes.

So let me know if you have any changes on the more technical changes that we've already gone through. And if not, we'll go back and start talking about the policy proposed -- not necessarily proposed. We haven't made a decision as to we want these or not. We are simply putting them out there for discussion by employers or input from employers or planned participants to see what your thoughts are.

So if you can go back to page 5, it's the continuation of 192-250-025 where it says "review policy." "What criteria will be used to evaluate a subsequent shared work plan application?" And the question is, should employers be limited to two plans within a three-year period? That has been the policy for quite some time.

Has somebody joined us on the phone?

MS. GRUWELL: This is LeeAnn Gruwell.

MS. MYERS: LeeAnn Gruwell. Can you spell your last name, please.
MS. GRUWELL: G-R-U-W-E-L-L.

MS. MYERS: Thank you. And who do you represent?

MS. GRUWELL: Employer Barclay Dean Architectural Products.

MS. MYERS: Okay. Thank you. We finished our review of the technical changes in the rules and you've joined us just in time to discuss the proposed policy changes.

MS. GRUWELL: Thank you.

MS. MYERS: And just a reminder that the call is being recorded. We have a court reporter here and so your comments or your input can be -- will be transcribed and form part of the permanent record so we can go back and refer to the input we received when drafting the rules.

MS. GRUWELL: Okay.

MS. MYERS: Okay. And each time you speak, if you could just say your name again. You don't have to spell it again. But just say your name so that we here know who's speaking. Obviously, we can't tell who's on the phone unless you introduce yourselves again.

MS. KRUGER: I would like to comment on that policy.

MS. MYERS: Okay.

MS. KRUGER: I'm not exactly sure why the employers are limited to two plans in a three-year period, but I know that it was a great hardship to our company to lose our shared work after two periods -- two plans and not
being eligible for the third one during the four- or five-year recession.

We're in the construction industry. We used to have 45 people at the office. We're down to about 6. And at times even those 6 people were on reduced hours. And it was really a lifesaver for our company, this program, to retain our key employees that have been with us a number of years that were highly competent. And this program helped them and it helped us.

I don't -- like I said, I'm not sure why, what the reasoning is, but -- and I know there are other factors because we used to have 45 people and then we only had 6 people paying into unemployment. Well, they, in the end, got the raw end of the deal, those 6 people left because they were paying for all those other -- other people and we didn't qualify for some unemployment.

So I would just say there are certain industries during a recession that get hit extremely hard, and to have, gosh, unlimited during a recession for construction workers or whatever would be helpful to us and to not be limited to two plans.

MS. MYERS: Right. The rules were changed quite some time ago that limited it to two plans just because we had some employers who had been on the plans for years. So after some internal discussions, we thought, Well, let's
limit it to two with a year break. But as you said, that hasn't worked out during this long recession.

And I'm sorry if the phone is staticky. We're getting static on our end and I think it's our phone.

MS. KRUGER: That's okay.

MS. MYERS: But, yeah, we are interested in people's input on that. Our thought had been that if they meet the other criteria of the law, that they are saving positions. They're not -- it's due to a general economic downturn, that type of thing, that there may not be any reason to limit it to two as long as they continue to meet the other requirements of the statute and of the regulations.

MS. GRUWELL: I concur. We are also in the construction industry, and what we've found was the shared work program was punitive to the office personnel because they are not under a bargaining agreement. Those hourly employees were able to -- basically, that's their version of a shared work program. They are able to be compensated differently than those employees that were in the office and had been working the whole time. When it got slow we were unable to accommodate them on a shared work program because by that point, our rate was so high because of trying to accommodate the field labor.

MS. MYERS: Right. And that's a point we're going to discuss a little later on is their rate class. Because
that's in a separate rule. And so we'll be discussing that in just a few minutes.

Any other input on limiting the number of plans to two -- or eliminating the requirement that employers are limited to two plans in a three-year period?

MS. HANDELAND: We would request that that limit be removed.

MS. MYERS: Thank you.

MR. ENGBRETSON: Again, I concur. We are related directly related to the construction industry, and in 2012 there were 115 residential building permits issued in the entire county of Yakima.

MS. MYERS: Wow.

MR. ENGBRETSON: Yeah.

MS. MYERS: Okay. Thank you for your input on that particular one.

The next page, page 7, we have a couple of policy changes there related to the requirement that employers must have at least two employees participating in the shared work plan. One, for example, that an employee -- excuse me -- an employer has two employees in the plan and then drops one mid-plan, do we revoke the plan or allow the employer to continue on the plan for the duration of the approval of that particular plan? The second question is, we have a number of plans out there where individuals
employers have only one person on the plan. Should we basically grandfather them in and allow them to continue their plan until it expires? So we'd be interested in your thoughts on that.

MR. ENGEBRETSON: We fall into that category where we had two employees on the work-share program -- shared work program. There were limited employment opportunities in Yakima over the last four years, and in March, our one employee was able to find a job down in Tri-Cities and for some other personal reasons wanted to move there anyway. And so of his own volition he left and so we now have one employee on that shared work program, and that expired on July 31st.

MS. MYERS: Right. And unfortunately, we can't change that one because the new law went into effect July 28th and it requires that an employer has at least two employees. And that's a law change.

MR. ENGEBRETSON: So we will not -- regardless, we will not qualify for any participation in the shared work program?

MS. MYERS: Not unless you have two employees.

MR. ENGEBRETSON: Well, but that takes care of that, doesn't it?

MS. MYERS: Unfortunately, that was a change in state law required by the federal law that the employer has to
-- we used to have -- allow it for one, and now it requires that they have at least two.

MR. ENGBRETSON: So that's not going to change?

That's not under review?

MS. MYERS: That's not under review. What we're talking about is people already have -- an employer gets a new plan approved at two employees and midway through their plan they drop one, should we allow them to continue? Because now they only have one person on the plan, do we allow them to continue for the duration of the approval?

MR. ENGBRETSON: And because of the expiration, we're out of that, correct?

MS. MYERS: Yes, you are. Yes, you are, I'm sorry to say.

MR. ENGBRETSON: Well, thank you. It did us a lot of good and our employees. We'll just have to figure out what's going on. Thank you.

MS. MYERS: Okay.

MS. KRUGER: I guess I would say that they be grandfathered in. If they have two employees, they would qualify. It would be hard to -- or I don't know if that's fair to take it away from someone that qualified at a point. That's a very tough question, but I guess I would go for they get grandfathered in if they start with two.
MS. MYERS: Okay.

MS. HANDELAND: I concur.

MS. MYERS: Okay. All right. Any other comments?

MS. GRUWELL: I just have a question. I understand that shared work means there are two people, but is there a reason to exclude a single employee that has reduced hours?

MS. MYERS: I don't have a reason other than that's what the federal law was changed to say. I don't know what Congress' reasoning was behind that.

MS. GRUWELL: Well, I think they should be allowed to continue.

MS. MYERS: Yeah. For those who already have an approved plan.

MS. GRUWELL: Correct.

MS. MYERS: Okay. Thank you. Any other input in that section? Okay.

On page 10, Subsection (1)(a), right now we allow benefits to -- we allow participation to individuals who are paid on an hourly basis only unless we can determine a -- take their rate of pay and establish an hourly wage based on that. For example, we have -- there's people employed on a piece rate, mileage rate, job rate, commission basis and we've also run into cases where we have salaried employees eligible for paid overtime. Those
people can be converted to an hourly rate. But the discussion had been -- and again, we are not advocating any of this, we're just asking for input -- should the eligibility be limited to regular hourly employees? Any input or questions?

MS. GRUWELL: No. It should not be limited to only hourly employees.

MS. MYERS: Okay.

MS. KRUGER: I concur. No, it should not be limited to regular hourly employees. Thank you.

MS. HANDELAND: I've heard the same thing from my folks that they would like to see it expanded.

MS. MYERS: Okay. Thank you.

And now under (2)(a) we're going to get to the section that will probably cause the most discussion here.

Right now businesses with a tax rate of 5.4 percent or more are not permitted to participate in the program. And we understand, particularly for small employers who add just a couple employees to the plan, they can quickly go from the lowest rate class up to the highest rate class and then they're not allowed to participate in the plan any longer.

So the questions are, should businesses with a tax rate of 5.4 or more or in Rate Class 40, not including the social cost factor, be eligible for participation in the
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program? And if they're allowed to participate, should it only be for the period that the State is being reimbursed for the cost of the program by the federal government?

And I know this has impacted a number of employers who have been cut off from shared work plan participation because they move into the highest tax rate. So I would be very much interested in your input on this.

MS. KRUGER: We were cut off because of our cost factor. We went above 5.4, and it was because during the recession we had to lay off so many people. We laid off 40 people, and the people left didn't qualify for shared work. So it hurt us. And so no. I don't think that businesses with a tax rate higher than 5.4 should be ineligible.

MS. GRUWELL: I concur. We -- our office employees were all denied shared work because we had, again, in construction -- I think this depends on the industry somewhat. Some things, some business mixes are, as you said, some of the rate classes, et cetera, cause the numbers to -- I think we did all we could to manage our unemployment and keep people working and our -- when it came time for us to look to try to keep project managers, we were unable to do that because the field employees had already -- with that we had already run up our rate by then.
MS. MYERS: Okay. Thank you. What about the thought that -- the reason we put this in originally into the rule was that after a period of time once you move into rate class -- the top rate class or the top tax rate, the cost that you incur in the program are socialized across all employers. So that's why we originally put it in is to reduce the amount of socialized cost.

So one of the thoughts -- again, it's just a thought, we're not advocating yes or no -- is that if we allow participation by individuals -- or employers in the top tax rate, should it be for a limited period of time from the period -- for the period from July 1, 2012, up to 2015 where our costs -- the cost of the program are reimbursed to the State or should this be an indefinite change?

MS. KRUGER: Basically, what the people in the higher tax rate have are those are the people that got hurt the worst and they are the people, unfortunately, that are getting penalized by this. And I don't think it was set up to work that way. I think this program is set up to help the people most in need. And unfortunately, for the cost of the program, the people with the most cost are in the most need. I cannot stress enough that those are the people that need it the most.

And we felt pretty bad that we were the small businesses, the one in the industry that has gotten worse
by the recession, and we were the ones that were kicked out while the other businesses that were doing well, you know, could participate. It did not make any sense to us. As far as the limiting, I just think, like I said before, with the two-year versus three-year plan or indefinite, you know, maybe there is a longer four- or five-year recession cut-off thing. But I don't think it should be restricted too tight in these long recessions. Things have picked up and we're coming out of it and we're going to be better now, but during those times, help is needed. I would not restrict it.

MS. MYERS: Okay. Thank you. Any other comments?

MS. GRUWELL: I concur with what was said. We were denied during the time we really needed it, and it only impacted office employees. So I think it's punitive that it's not able to be taken advantage of when this is exactly what it was designed for.

MS. MYERS: Okay. Thank you. Anyone else? Okay. Well, that concludes our review of the rules. Does anybody else have any comments or other suggestions for rule changes that they've identified that we did not? No? Okay. What we're going to do is go back and take your comments, make some decisions based on the policy comments we received and come up with some definitions of
"permanent basis" and "regular number of hours of work," and we'll send these back out for you to take a look and the draft rules that we will be sending to the larger stakeholder group. But because you asked for participation, you'll get the first chance to review them, and you can comment then at that time. You'll see what the decision was. But we will certainly take your input into consideration.

It's very important to us that the public participate in this rule-making effort because we don't -- we aren't out there in the public trying to manage businesses and we need to know how our rules impact the regulated community. So unless you have additional comments we're going to -- oh, I'm sorry. There is one.

MS. HANDELAND: It isn't in regards to the rule-making but it is a question about the process. We're trying to reduce our paper costs and I'm not too familiar with this. I'm new to it. But I understand it's pretty paper intensive. And is there a way that we could do the application process online or have -- I think there's something about downloading the employee list in an Excel format or something like that. I haven't seen it but -- and I apologize, but can somebody speak to that?

MS. BROWN: I'll go ahead and speak to that. We do have an application and participant list that is in both
PDF and Excel, and that is available for us to either
e-mail to you or you can get that on our Web site. And
its interactive and it is like a form-fill so you're able
to input that, print it off, go ahead and sign it and then
you can upload that right back onto -- scan it back in
your machine and upload it right back in.

MS. HANDELAND: Thanks very much.

MS. BROWN: So I know that's one of the things that
we had heard from a lot of employers and so that's why we
went ahead and put that in place, and also to save the
cost of paper as well.

MS. HANDELAND: Thank you.

Rule-making Process: What's Next

MS. MYERS: Anyone else? All right.

As I said, we'll go back, draft the rules based on
the input we received from you and from our management
here at the Department, and we will send you out a revised
copy showing the changes that we are going -- that we are
proposing. You'll have an opportunity again at that point
to see what we've put in there and provide your comments
again. And, again, we are most interested in hearing from
you. We are kind of on a fast track to get these
implemented, and so hopefully maybe within a couple of
weeks we can get these drafted and out to you to take a
look at.

So that being said, we'll go ahead and end the
hearing. And I thank you all for your participation.
Thank you.

(Whereupon, proceedings concluded at 9:55 a.m.)
CERTIFICATE

STATE OF WASHINGTON )
   ) ss.
County of Pierce   )

I, Cheryl A. Smith, a Certified Court Reporter in and for the State of Washington, do hereby certify:

That the foregoing transcript of proceedings was taken before me and transcribed under my direction; that the transcript is an accurate transcript of the proceedings insofar as proceedings were audible, clear and intelligible; that the proceedings and resultant foregoing transcript were done and completed to the best of my abilities for the conditions present at the time of the proceedings;

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

IN WITNESS WHEREOF, I have hereunto set my hand on this 15th day of August, 2013, at Auburn, Washington.

Cheryl A. Smith, CCR, CVR-M
Excel Court Reporting
16022-17th Avenue Court East
Tacoma, WA  98445

(CCR License #3017)