

Washington State Care Fund Program  
LTSS Rulemaking Stakeholder Meeting

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Thursday, November 21, 2024

9:02 a.m.

Olympia, Washington

1 APPEARANCES:

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3 FOR WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT  
4 LEAVE AND CARE DIVISION:

5 MS. JANETTE BENHAM, Rules Coordinator  
6 MR. BRETT CAIN, Policy Analyst  
7 MR. JASON BARRETT, Lead Policy Analyst  
8 Employment Security Department  
9 212 Maple Park Avenue SE  
10 Olympia, Washington 98501  
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1           BE IT REMEMBERED that on Thursday, November  
2 21, 2024, commencing at 9:02 a.m., via Microsoft Teams,  
3 LTSS Rulemaking Stakeholder Meeting, taken before Bethan  
4 Williams, Certified Court Reporter in and for the State  
5 of Washington.

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7           The following proceedings took place:

8

9           MS. BENHAM: Okay. Good morning and welcome,  
10 everyone. My name is Janette Benham, and I'm the  
11 rules coordinator for the leave and care division  
12 at the Employment Security Department. There are  
13 other members from the leave and care policy and  
14 rules team on the call, and I'll ask that they  
15 introduce themselves now.

16           MR. CAIN: Good morning. I'm Brett Cain. I  
17 am with the rules and policy unit for the leave and  
18 care division here at ESD. Welcome, everyone.

19           MR. BARRETT: Good morning. My name is Jason  
20 Barrett. I'm the lead policy analyst for the leave  
21 and care division of ESD, and we appreciate you  
22 being with us this morning.

23           MS. BENHAM: Thank you. We're here this  
24 morning to review and discuss draft rules the  
25 department's considering regarding the WA Cares

1 Program. I want to also let everyone know that  
2 this meeting is being recorded.

3 The rules we'll be discussing today are:

4 Chapter 192-900 WAC - definitions. Revisions  
5 include three new definitions.

6 WAC 192-800-015 - sections of general  
7 procedural rules for appeal under Chapter 192-800  
8 WAC apply.

9 And Chapter 192-940 WAC - qualified  
10 individuals. This is a new chapter and includes  
11 two new rules.

12 If you've called in for this meeting, please  
13 keep your mute on by using the mute function on  
14 your phone or by pressing star 6. Please keep in  
15 mind that the subject of this call is draft rules I  
16 just referenced. We will not be discussing other  
17 rules, and if you have a question about a Paid  
18 Family and Medical Leave claim or application,  
19 please hang up and call our customer care team at  
20 (833) 717-2237.

21 I also want to ask that if you're commenting  
22 on the proposed rules to please state and spell  
23 your name and indicate if you are here on behalf of  
24 an organization. And I again want to remind  
25 everyone that this meeting is being recorded.

1           The drafts that we'll be reviewing and  
2           discussing can be found online at  
3           esd.wa.gov/newsroom/rulemaking -- all one word --  
4           /ltss. When you see "Rules Under Development,"  
5           click on the draft rules for each subject to view  
6           the text of the changes being discussed. After  
7           clicking on the hyperlink for each subject, you can  
8           use your browser's back button to go back to the  
9           rulemaking page.

10           Before we open the floor for comments, I want  
11           to give folks an opportunity to ask any questions  
12           about anything I just discussed, why we're here,  
13           where to find the draft rules, or any other general  
14           questions. Go ahead and unmute yourself using your  
15           computer or press star 6 on your phone if you'd  
16           like to ask any questions.

17           (NO RESPONSE.)

18           MS. BENHAM: Okay. Let's start with draft  
19           amendments to Chapter 192-900 WAC - definitions.  
20           There are three new rules added to this chapter.

21           The first is WAC 192-900-040 out-of-state  
22           participant. This rule defines an out-of-state  
23           participant as an individual who has elected  
24           coverage under RCW 50B.04.180. It refers to people  
25           who move outside of Washington and elect to

1 continue WA Cares coverage.

2 Are there any questions or comments on this  
3 rule?

4 (NO RESPONSE.)

5 MS. BENHAM: Okay. Hearing none, we can move  
6 on to the next one.

7 The next is WAC 192-900-045 qualified  
8 individual. This rule defines a qualified  
9 individual as someone who has met the requirements  
10 under RCW 50B.04.050 and Chapter 192-940 WAC. Both  
11 of these references outline the details of  
12 contribution requirements to qualify for the  
13 benefit.

14 Are there any questions or comments on this  
15 rule? Please feel free to unmute yourselves or  
16 press star 6 on your phone if you'd like to ask a  
17 question or comment.

18 (NO RESPONSE.)

19 MS. BENHAM: We will move on to the last  
20 definition in this chapter. It's WAC 192-900-050  
21 Year. This rule defines a year as a calendar year  
22 beginning on January 1st and ending on  
23 December 31st.

24 Are there any questions or comments on this  
25 rule?

1 (NO RESPONSE.)

2 MS. BENHAM: All right. We'll now move on to  
3 WAC 192-925-015 sections of general procedural  
4 rules for appeal under Chapter 192-800 WAC apply.  
5 This amendment adds a reference to a Paid Family  
6 and Medical Leave rule to ensure the processes and  
7 procedures for the department to address appeals  
8 align between both programs that the leave and care  
9 division manages.

10 Alignment is required under RCW 50B.04.120.  
11 The referenced section, WAC 192-800-155,  
12 specifically outlines what proceedings are open to  
13 the public and what information is publicly  
14 disclosable.

15 Are there any questions or comments on this  
16 rule?

17 (NO RESPONSE.)

18 MS. BENHAM: Okay. We'll move on to the new  
19 Chapter 192-940 WAC qualified individuals. There  
20 are two new rules in this chapter. The first is  
21 WAC 192-940-005 earning years to become a qualified  
22 individual. This rule outlines what wages and  
23 hours will be used in the determination of years  
24 earned toward qualified individual status, how the  
25 hours will be determined in a year, and specifies

1           that wages and hours reported when an individual  
2           had an approved exemption don't count toward  
3           qualifying for the benefit.

4           Are there any questions or comments on this  
5           rule?

6           (NO RESPONSE.)

7           MS. BENHAM: All right. The last section is  
8           WAC 192-940-010 how will the department determine  
9           if someone is a qualified individual? This rule  
10          outlines the three different options available for  
11          someone to become a qualified individual, outlines  
12          the circumstances in which someone could continue  
13          to earn years toward becoming a qualified  
14          individual, clarifies that people may not exceed  
15          the maximum lifetime benefit amount, and that  
16          people who have approved exemptions cannot become  
17          qualified individuals.

18          Are there any questions or comments on this  
19          rule?

20          (NO RESPONSE.)

21          MS. BENHAM: That was the final rule in this  
22          rulemaking package that we wanted to ask for  
23          questions or comments on.

24          Are there any questions or comments related to  
25          any of the draft rules we've discussed today? If



1 so, feel free to go back and let us know which rule  
2 you're commenting on.

3 MS. CASTRO: Hi, Janette. This is Veronica  
4 Castro.

5 MS. BENHAM: Hi, Veronica.

6 MS. CASTRO: Hi, I am representing QuickBooks  
7 Payroll today, and I want to just make a comment  
8 and I'm glad that this rulemaking is starting early  
9 and I know that it has been on our radar to keep  
10 tabs on in terms of changes.

11 And I think the question is are there going to  
12 be additional rules that outline the reporting  
13 requirements for these out-of-state participants,  
14 and if so, when can we expect those?

15 From a payroll perspective and from a  
16 third-party payroll provider perspective, we are  
17 always kind of curious to see how this is going to  
18 impact the payroll reporting that employers are  
19 required to file and what changes that may bring to  
20 the existing requirements.

21 MS. BENHAM: Those are great questions, and  
22 thank you for asking them. Your first question:  
23 Are there going to be additional rules for  
24 out-of-state participants? The answer to that is  
25 yes, and we are trying to wade through what

1 requirements we need to put into rule for the  
2 out-of-state participants and that is for people  
3 who elect coverage out of state.

4 Some of the things that we are looking at --  
5 when people move out of state, they are going to be  
6 required to report their wages in hours, they're  
7 going to be responsible for that report, whether or  
8 not they have employer assistance with that is  
9 something that we are trying to work out and we  
10 have come up with a few ideas about that and it may  
11 consist of a form that they request their employer  
12 to fill out, and for self-employed people it may  
13 consist of just verification of wages. We don't  
14 know exactly what that looks like yet.

15 One of the -- one of the snags we're running  
16 into is we don't have authority over employers who  
17 are out of state, and so there may be a situation  
18 where someone moves out of state and they have a  
19 Washington employer and that Washington employer  
20 may help them with their reporting, but the  
21 individual is going to be responsible for that  
22 reporting. It's not going to be the employer  
23 responsible for that.

24 And I just want to invite you if you have  
25 questions or ideas on how that could work better,

1 I'd like to invite you to let me know and I'd be  
2 happy to have a discussion with you about that.

3 And that's part of the reason that we don't  
4 have that in these rules right now is because there  
5 are so many nuances to reporting for individuals  
6 out of state. So we're going to be looking at that  
7 in the future, in the near future, and we are going  
8 to be opening another rules package when we have  
9 more information and a really good process -- the  
10 best process we can come up with for how these  
11 individuals are going to be reporting to us.

12 So I'd encourage you to reach out to me if you  
13 want to -- if you have ideas about that or if you  
14 want to have more of a discussion about that.

15 So your last question was third-party payroll,  
16 how it impacts and changes. And I think the first  
17 question that I answered helps answer that question  
18 too. We just don't have specifics of what this is  
19 going to look like.

20 Does that help?

21 MS. CASTRO: Yes, yes, it does. And I think a  
22 quick follow-up question, it sounds like the  
23 agency, then, is thinking about the out-of-state  
24 contributions to be managed outside of payroll, is  
25 that correct -- a correct assumption?

1 MS. BENHAM: Outside of payroll, do you mean  
2 outside of payroll and reporting as you currently  
3 do for state employees here in Washington?

4 MS. CASTRO: So today the Washington Cares  
5 contribution, the employee contributions are  
6 managed through a payroll -- you know, a payroll  
7 tax. So that's something that we as a payroll  
8 provider help track and facilitate payments and  
9 help reporting for.

10 For these out-of-state employee contributions  
11 or -- yeah, contributions I'm going to call them,  
12 these are going to be something that if I, say,  
13 live in Oregon and want to contribute to the WA  
14 Cares, I would then just mail a check in for myself  
15 to your agency, or is that something that the  
16 employer in Oregon will have to track as well on  
17 my -- on my paycheck?

18 MS. BENHAM: It's going to be the  
19 individual --

20 MS. CASTRO: Okay.

21 MS. BENHAM: -- because we don't -- yeah,  
22 you've got that exactly right. That's how we're  
23 looking at it now because we don't have the  
24 authority to enforce employers outside of the state  
25 to report under our payroll reporting system.

1 MS. CASTRO: Makes sense. I would also  
2 encourage you -- we are part of the National  
3 Reporting -- Payroll Reporting Consortium, NPRC.  
4 This is a payroll trade association among others  
5 like ourselves QuickBooks Payroll, ADP, Paychex,  
6 Gusto, for example, are also part of this  
7 organization, and we are happy to entertain and  
8 provide feedback in terms of, you know, any type of  
9 rulemaking and changes that your agency is  
10 thinking, even though you confirmed that these  
11 would not be handled through a payroll tax  
12 deduction like the traditional WA Cares employee  
13 contributions are.

14 But if you are looking for broad, I think, you  
15 know, feedback or just as a sounding board, we are  
16 happy to provide that. And if you'd like, I can  
17 send you the information of the contact who leads  
18 these meetings and we can schedule something in the  
19 near future and we can, you know, maybe have a  
20 conversation about the potential rules that you're  
21 looking to entertain.

22 MS. BENHAM: That would be really helpful, and  
23 if you could send -- e-mail me that contact  
24 information, that would be great. You can send  
25 that to [rules@esd.wa.gov](mailto:rules@esd.wa.gov).

1 MS. CASTRO: Perfect. Can you post that in  
2 chat? Can I ask you to do that just to make sure  
3 that I've got your information?

4 MS. BENHAM: I have chat turned off for this  
5 meeting.

6 MS. CASTRO: Okay.

7 MS. BENHAM: It's rules, R-U-L-E-S,  
8 @esd.wa.gov.

9 MS. CASTRO: Okay. Perfect. Thank you.

10 MS. BENHAM: Thanks. Really appreciate your  
11 input and helpful comments too.

12 Is there anyone else who has any questions or  
13 comments on any of the rules that we have discussed  
14 today?

15 All right. With that, we will close out.  
16 Thank you for attending this morning.

17 Regarding next steps, we will gather all the  
18 comments we've received and we might be getting  
19 some comments by e-mail also and we'll determine  
20 which should be incorporated and then draft  
21 paperwork to formally propose the rule language.  
22 Once the proposed rules and paperwork are filed  
23 with the Office of the Code Reviser, individuals  
24 will have an opportunity to participate in a public  
25 hearing and provide written comments up to and

1 through the day of the hearing.

2 Following the hearing, if no substantive  
3 changes to the rules are necessary, we will file  
4 paperwork providing a response to each comment  
5 received during the formal comment period and  
6 hearing and then we will adopt the rules.

7 Please visit  
8 [esd.wa.gov/newsroom/rulemaking/ltss](http://esd.wa.gov/newsroom/rulemaking/ltss) for more  
9 information when these next steps occur. And if  
10 you haven't already signed up to receive rulemaking  
11 notifications, you can do so there.

12 If you have any additional questions or  
13 comments, please feel free to send us an e-mail at  
14 [rules@esd.wa.gov](mailto:rules@esd.wa.gov) again, that's R-U-L-E-S  
15 @esd.wa.gov.

16 Again, thank you for your participation this  
17 morning, and I hope you have a great day.

18 (Hearing concluded at 9:19 a.m.)

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CERTIFICATE

I, BETHAN WILLIAMS, a Certified Court Reporter in and for the State of Washington, residing at Vancouver, do hereby certify;

That the foregoing proceedings were taken before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true, and complete transcript of said proceedings;

That as a CCR in this state, I am bound by the Rules of Conduct as Codified in WAC 308-14-130; that court reporting arrangements and fees in this case are offered to all parties on equal terms.

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 upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of December 2024.



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Bethan Williams, RSR, WA CCR #8344