



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, May 7, 2020

Time: 8:30 a.m. to 11:30 a.m.

Location: Skype meeting due to COVID-19

Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Erik Nicholson
- Ramon Torres

Committee members absent

ESD staff

- Dan Zeitlin
- Alberto Isiordia
- Gustavo Aviles
- Norma Chavez
- Tamara Johnson
- Rene Maldonado
- Sara Crosby
- Craig Carroll
- Mike Schulte
- Juan Martinez
- CaraMia Stearns-Vance

Non-voting agency representatives

- Todd Phillips
- Uriel Iniguez
- Ignacio Marquez
- Dave Gifford

Summary

Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked them to introduce themselves.

Agenda

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. Rosalinda asked whether a decision regarding recording of the ASWS Advisory Committee meetings had been made. Dan advised that the committee would need to have a discussion and vote on whether to record the meetings. Rosalinda asked to have a discussion and vote added to the agenda. Recording of ASWS Advisory Committee Meeting was added to agenda after the break scheduled at 10:00 a.m. (See Addendum I.)

Meeting Minutes

Meeting minutes review and discussion was moved to follow the break.

Review of Senate Bill 5438

Norma presented a review of Senate Bill 5438 and the advisory committees' role and responsibilities to report to the legislature. (See Addendum II.)

Report due to Legislature

Norma Chavez suggested that the committee discuss requesting an extension to submit the report due to the delays while the Committee dealt with COVID-19 issues. The report is currently due to the legislature by October 31, 2020. The proposed timeline is to have the contents of the report agreed upon by the committee by October 31, 2020 and to submit it to the legislature by December 31, 2020.

Dan Zeitlin lead the discussion with the committee members regarding the report and deadline extension. Erik Nicholson asked for a reminder of the needed components of the report and agreed with the request for an extension.

In response to Erik's request, Dan stated there are two main components.

- The committee is charged with analyzing the way that ESD, in coordination with other agencies, recruits, refers, and verifies domestic workers in order to provide recommendations to the legislature and the Governor.
- Analysis of the budget which entails looking at the different funding sources at ESD's disposal and the funding needed to properly staff and resource the ASWS office.

Dan stated that we should focus on the budget discussion earlier in the process of writing the report as ESD needs to make any budget proposals in July or August for the upcoming biennium.

Mike Gempler also agreed with the request for an extension and stated that we may have until January when the legislature is back in session.

Domestic Worker Recruitment & Referral

Norma presented the updated process map for Domestic Worker Recruitment & Referral. The updates included the CFR's and timelines associated with the steps in the process. (See Addendum III.)

Sarah Crosby facilitated a discussion of Domestic Worker Recruitment and Referral process. She provided a virtual whiteboard where she captured some high-level notes. (See Addendum IV.)

Discussion:

MIKE GEMPLER (WGL): Where in this process does interaction with the unemployment insurance system occur? Are people who have applied for unemployment benefits with relevant experience being identified?

ALBERTO ISIODIA (ESD): Currently there are two ways we interact with unemployment:

1. Reemployment program - We identify individuals that are most likely to exhaust unemployment insurance benefits and based on that criteria we may call them in for an appointment with the intended goal of helping them achieve employment, which may include referring workers to H-2A job opportunities.

2. Unemployment system - The best way we have to identify whether somebody actually went to work for an employer or not is to cross reference with unemployment insurance wage data. We have the ability to do that and it is how we report outcomes to the Department of Labor.

CRAIG CARROLL (ESD): There is no standardized way of getting a list of those people and informing them directly of opportunities at sites where there are H-2A contracts, but they are available on our website and through other marketing means.

ROSALINDA GUILLEN (CTC): This is something we have discussed in the past, that the recruitment for local workers is not sufficient, there is no real proactive program from ESD to go out and recruit local workers. I would like to flag the qualification of “agreeing to the entire contract” has a big influence as to how ESD recruits domestic workers. I think this is something that is part of what caused ESD to not pay more attention to aggressively recruiting domestic workers while administering the H-2A program.

CRAIG CARROLL (ESD): To be able and available for the entire period of the contract is a federal guideline not a state guideline. We discussed at the end of the presentation before about some of the limitations to being able to do proactive recruitment. H-2A and H-2B programs are unique in that now with our self-serve labor exchange system they are the only types of job orders that we do any type of active recruitment outside of job fairs, etc.

MICHELE BESSO (NWJP): Yet, there is nothing in the contract that says that they have to commit that they will work for the entire period, correct? What I mean is it's different saying I am available I have nothing that would stop me from being able to do it. That is different than stating I will work at this farm for the entire nine months.

CRAIG CARROLL (ESD): There is no requirement that anyone sign a contract. If someone is turned down from a job because they refused to sign a contract that's a big problem. There are a lot of employers especially during cherry or apple harvest, that will hire people under the terms of the H-2A contract that are not indicating that they are available, because they need the help. It depends on the activity that's going on, but definitely during cherries you'll see a lot of growers hire people who are not willing to commit to the entire contract.

ALBERTO ISIORDIA (ESD): I agree with what's been stated by Craig.

ROSALINDA GUILLEN (CTC): Is there any way to be able to capture that data? Because I think that makes a big difference when we're talking about local workers being hired.

ALBERTO ISIORDIA (ESD): The only way I would know to capture the data as to whether somebody was not hired because they were not willing to commit to the length of the contract would be to review the recruitment reports that employers are required to maintain by federal law. If that was the reason for disqualifying somebody that applied for a job it would need to be captured there and at this time, we don't collect those.

ERIK NICHOLSON (UFW): I was talking a couple weeks ago with some workers in the lower Yakima Valley that have been employed since the beginning of the year. With the arrival of H-2A workers they are now being compelled to sign contracts as a condition of continued employment. The contracts were presented as obligatory rather than optional. I think this is an area that I

welcome additional clarification and I think we need some concise communication with the farmworker community about what employers can and cannot compel people to do.

ALBERTO ISIORDIA (ESD): There are some nuances to this because obviously once somebody is going to start work there's a lot of employment verification type of documentation that needs to be filled out by a worker. Usually that's pretty standard for all employers and some employers may ask all their employees to sign to confirm that they received a company manual for example and so, again, there are nuances. I think the situation where I think we would express concern is if prior to beginning a job an employer asks for a worker to sign a contract. I think that would be an area where there may be some red flags. Is that a fair statement in your experience, Craig?

CRAIG CARROLL (ESD): I would say there's a difference between signing something that says you've been informed or provided something and any kind of contract that would indicate you are committed to staying through the end of the contract. There is no actual contract and there's no binding agreement between the worker and employer. On the employer's side, if you agree then you are required to keep the worker as long as they're performing adequately. But I've also heard of some employers having workers sign a document saying that they were offered a contract and they chose not to accept the terms of the contract and those are sometimes existing employees. That is also inappropriate. I always suggest that anybody that receives information like that should encourage those people to reach out to WorkSource staff and report an apparent violation complaint.

SARAH CROSBY (ESD): There is a question that came up in the comments, "What about in the case of bonuses?"

CRAIG CARROLL (ESD): Employers can offer bonuses as long as they define how you earn the bonus and it's applied in a standard way for all employees foreign and domestic. It must be defined in the ETA 790.

ERIK NICHOLSON (UFW): I think if we could share the November minutes, we could fast-track our conversation today as we covered a lot of this ground in that meeting.

Dan Zeitlin asked for the document to be shared on the screen to assist in the discussion. Sarah Crosby read the portion of the minutes that were discussed in the previous meeting. (See Addendum V.)

MICHELE BESSO (NWJP): I'm interested in looking at where is there the most potential to make improvements. I would like to hear maybe from Norma or Alberto because I know they've been looking at this since our meeting and I just wonder if you've identified any places where you see some potential for change within the system?

NORMA CHAVEZ (ESD): We started to have weekly meetings with the order holding offices in generating ideas such as more targeted outreach, working with other agencies to collaborate and providing employers with information to give to their workers. Also, the non-ag holding offices are being trained on how job orders work.

ALBERTO ISIORDIA (ESD): There has been an emphasis on training, and I think Norma's team is doing a great job on that internally. I think we talked about one of the problems we had is our staff don't go into the queue to determine who's qualified and who is not in the system, so those

applicants don't move on to the employer. That's an important piece from a training perspective. We need to determine if there is an ability to put employer information that is already widely out there by the feds and put that information more clearly in our system to allow also a direct linkage between workers and employers. I think there needs to be more discussion around how we verify hires outside of H-2A. We rely pretty heavily on UI data to confirm whether somebody was hired or not on a job order, but it lags. Not getting data quickly and efficiently reduces our ability to provide other services and it has a budgetary impact and so I do think that needs to be revisited as well.

ERIK NICHOLSON (UFW): I'd like to comment on the document when we come back from the break.

DAN ZEITLIN (ESD): We'll take a 15 minute break and as discussed at the top of the agenda we will go back to approving the meeting minutes and if there's a call for a vote on recording meetings we can do that and then continue this discussion until we get to the closing discussion at 11:15. We'll see everybody back here at 10:15.

April 9th, 2020 Meeting Minutes

Dan Zeitlin requested that everyone review the April 9th, 2020 meeting minutes and provide their feedback. Erik Nicholson made a motion to accept the meeting minutes. Jon DeVaney seconded. The April 9th, 2020 Meeting Minutes were approved. (See Addendum V.)

April 16th, 2020 Meeting Minutes

Dan Zeitlin requested that everyone review the April 16th, 2020 meeting minutes and provide their feedback. Rosella Mosby made a motion to accept the meeting minutes. Jon DeVaney seconded. The April 16th, 2020 Meeting Minutes were approved. (See Addendum VI.)

Recording ASWS Advisory Committee

Rosalinda made a motion to have the ASWS Advisory Committee meetings recorded. The motion was seconded by Michelle Besso. Discussion was had between committee members and a vote was held.

- Michele Besso - Yay
- Jonathan DeVaney - Nay
- Michael Gempler - Yay
- Rosalinda Guillen - Yay
- Rosella Mosby - Nay
- Delia Peña - Nay
- Erik Nicholson - Abstain
- Ramon Torres - Yay

The motion passed. All meetings will be recorded from this point forward, including the remainder of this meeting.

RECORDING STARTED

Domestic Worker Verification Process

Norma presented the updated process map for Domestic Worker Verification Process. The updates included the CFR's and timelines associated with the steps in the process. (See Addendum III.)

Sarah Crosby facilitated a discussion of Domestic Worker Verification process. (See Addendum III.) She also provided a virtual whiteboard where she captured some high-level notes. (See Addendum IV.)

Summary of Committee Questions/Answers:

Can we define Field Checks and Field visits?

A field visit is friendly, scheduled outreach with employer and worker. Field check is unplanned, random and specifically focused on wages, living and working conditions.

How many compliance positions are you planning to add?

We are planning to add nine staff members as part of compliance unit.

When will they be hired?

We plan to hire staff in the next month or two.

Is there education/training for compliance staff?

We will coordinate our training with USDOL to extensively train our compliance staff.

The staff will be trained to appropriately assess situations and to speak to workers privately, when they are in a safe space.

Are field checks triggered by complaints?

They can be triggered by complaints, but they are also chosen at random. We are also required to do certain number of field checks as part of the monitoring regulatory process. (See federal regulatory statute.)

Action Items

- Report of total number of H-2A workers in state
- Identify issues we can address quickly or recommend to legislature

Agenda Items for Next Meeting

- Wagner Peyser Budget

Public Comments

Dulce Gutierrez, Washington State Labor Council AFLCIO

Ed Waite, Community member of Whatcom County

Dea Angeles Quiroz, Consulate of Mexico

Cristina Ortega, Latino Community Fund

Mary Lopez, One America

Oskar Zambrano, Latino Community Fund

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:51 a.m.

2020 Meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **May 21st , 2020 – 8:30 a.m. to 11:30 a.m.**
Skype Meeting

Addendums

ADDENDUM I



Agenda

Agricultural and Seasonal Workforce Services (ASWS)
Advisory Committee

Thursday, May 7th, 2020 | 8:30 am – 11:30 am | SKYPE

Agenda Items

TIME	TOPIC
8:30 am	Introductions <ul style="list-style-type: none"> Welcome from Dan Zeitlin, Director, ESD Policy, Data, Performance and Integrity Division & Norma Chavez, Director – Agricultural and Seasonal Workforce Services Agenda Review
8:35 am	Approval of Meeting Minutes for April 9 th & 16 th
8:45 am	Review Senate Bill 5438 <ul style="list-style-type: none"> ASWS Report (Due October 31st, 2020)
9:00 am	Domestic Worker Recruitment & Referral – Norma/Alberto/Craig/Rene/CaraMia <ul style="list-style-type: none"> Present updated flow chart with federal requirements illustrated Discuss areas to increase effectiveness.
10:00 am	Break
10:15 am	Domestic Worker Verification Process – Norma/Alberto/Craig/Rene/CaraMia <ul style="list-style-type: none"> Present updated flow chart with federal requirements illustrated Discuss areas to increase effectiveness.
11:15 am	Closing Discussion <ul style="list-style-type: none"> Discuss next agenda
11:25 am	Public Comments
11:30 am	Adjourn

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

ADDENDUM II

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5438

Chapter 441, Laws of 2019

66th Legislature
2019 Regular Session

H-2A TEMPORARY AGRICULTURAL PROGRAM--EMPLOYMENT SECURITY DEPARTMENT

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 22, 2019
Yeas 35 Nays 12

CYRUS HABIB

President of the Senate

Passed by the House April 11, 2019
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 21, 2019 1:45 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5438** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 21, 2019

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5438

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators McCoy, Saldaña, Conway, Van De Wege, Keiser, Rolfes, Wellman, Dhingra, Hasegawa, and Kuderer; by request of Employment Security Department)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to establishing the office of agricultural and
2 seasonal workforce services within the employment security
3 department; and adding a new chapter to Title 50 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the
6 agricultural industry in the state of Washington employs more than
7 one hundred thousand workers per year and brings more than seven
8 billion dollars of economic activity to our state. This industry and
9 its workers are a vital part of Washington's role in the global
10 economy. The legislature further finds the number of the H-2A
11 temporary agricultural workers coming into the state of Washington to
12 harvest crops has grown by more than one thousand percent since 2007
13 and the funding provided by the federal government is insufficient to
14 adequately ensure the protection of workers and growers. The
15 legislature also finds the need to ensure this growth does not have
16 an adverse impact on the domestic agricultural labor force.

17 The legislature declares it to be in the public interest to
18 clarify the state's role in the H-2A temporary agricultural program
19 to provide adequate protections for foreign and domestic workers and
20 provide education and outreach opportunities to help growers maintain
21 the stable workforce they need.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Commissioner" means the commissioner of the employment
5 security department.

6 (2) "Department" means the employment security department.

7 (3) "Employer" has the same meaning as in 20 C.F.R. Sec. 655.103.
8 "Employer" also includes a "fixed-site employer," as defined in 20
9 C.F.R. Sec. 655.103, and an employer in a "joint employment"
10 relationship, as defined in 20 C.F.R. Sec. 655.103.

11 (4) "Field check" means an unannounced inspection and audit of an
12 employer to determine and document whether the employer is providing
13 wages, hours, and working and housing conditions as specified in the
14 employer's approved H-2A application, as required by the United
15 States department of labor.

16 (5) "Field visit" means a scheduled visit to an employer's
17 premises where H-2A workers work, live, and gather to discuss
18 employment services and other employment-related programs with
19 workers, as required by the United States department of labor.

20 (6) "H-2A application" means an agricultural food processing
21 clearance order form ETA 790 that describes the material terms and
22 conditions of employment and is submitted in connection with a future
23 application for temporary employment certification for H-2A workers
24 to the United States department of labor under 20 C.F.R. Part 655, as
25 amended.

26 (7) "H-2A worker" means any temporary foreign worker who is
27 lawfully present in the United States to perform agricultural labor
28 or services of a temporary or seasonal nature pursuant to Title 8
29 U.S.C. Sec. 1101(a)(15)(H)(ii)(a) of the immigration and nationality
30 act, as amended.

31 (8) "Office" means the office of agricultural and seasonal
32 workforce services established in section 3 of this act.

33 NEW SECTION. **Sec. 3.** (1) The office of agricultural and
34 seasonal workforce services is established within the department.

35 (2) The duties of the office are:

36 (a) Processing and adjudicating foreign labor certification
37 applications from employers;

38 (b) Processing complaints consistent with 20 C.F.R. Part 658,
39 Subpart E;

1 (c) Conducting field checks and field visits, as required by the
2 United States department of labor. When conducting a field check, the
3 office shall coordinate, to the extent possible, with the department
4 of labor and industries, department of health, and department of
5 agriculture in order to limit disruption to agricultural employers
6 and efficiently use government resources;

7 (d) Administering the discontinuation and reinstatement of
8 services process pursuant to 20 C.F.R. Part 658, Subpart F; and

9 (e) Conducting training and outreach activities to employers who
10 are using agricultural and seasonal workforce services and programs
11 within the employment security department.

12 NEW SECTION. **Sec. 4.** (1) An employer must submit an H-2A
13 application in the manner and on a form prescribed by the department.
14 The H-2A application is not subject to chapter 50.13 RCW.

15 (2) The department may not process an H-2A application if the:

16 (a) Employer refuses to agree to be subject to field checks and
17 field visits; or

18 (b) Department discontinued services to the employer pursuant to
19 20 C.F.R. Part 658, Subpart F and that discontinuation remains in
20 effect.

21 NEW SECTION. **Sec. 5.** (1) The commissioner shall appoint an
22 advisory committee to review issues and topics of interest related to
23 this chapter.

24 (2)(a) The committee is composed of eight voting members:

25 (i) Four voting members representing agricultural workers'
26 interests: One of whom shall be a farmworker; and all of whom shall
27 be appointed from a list of at least four names submitted by a
28 recognized statewide organization of workers;

29 (ii) Four voting members representing agricultural employers: One
30 of whom shall be an agricultural employer; and all of whom shall be
31 appointed from a list of at least four names submitted by a
32 recognized statewide organization of agricultural employers; and

33 (iii) One ex officio member, without a vote, shall represent the
34 department and serve as the chair.

35 (b) The department of labor and industries, department of health,
36 and department of agriculture shall each have one nonvoting ex
37 officio member serve on the advisory committee.

1 (3) On issues and topics of interest related to this chapter, the
2 committee shall provide comment on department rule making, policies,
3 implementation of this chapter, and initiatives, and study issues the
4 committee determines require consideration.

5 (4) In even years, the committee shall submit a report to the
6 governor and the legislature by October 31st that:

7 (a) Identifies and recommends approaches to increase the
8 effectiveness of the employment security department's recruitment
9 process as part of the H-2A application. If deemed advisable by the
10 committee, the report may include recommended changes to state law
11 that would lead to increased recruitment and hiring of domestic
12 workers in agricultural employment in Washington; and

13 (b) Analyzes the costs incurred by the office to administer the
14 H-2A program, the funds to administer other department programs for
15 farmworkers, and the amount of funds allocated by the federal
16 government to administer the H-2A program and all other agricultural
17 programs within the department.

18 (5) The committee members shall serve without compensation, but
19 are entitled to reimbursement for travel expenses as provided in RCW
20 43.03.050 and 43.03.060. The committee may utilize department
21 personnel and facilities as it needs, without charge.

22 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
23 conflict with federal requirements that are a prescribed condition to
24 the allocation of federal funds to the state or the eligibility of
25 employers in this state for federal unemployment tax credits, the
26 conflicting part of this act is inoperative solely to the extent of
27 the conflict, and the finding or determination does not affect the
28 operation of the remainder of this act. Rules adopted under this act
29 must meet federal requirements that are a necessary condition to the
30 receipt of federal funds by the state or the granting of federal
31 unemployment tax credits to employers in this state.

32 NEW SECTION. **Sec. 7.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

36 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
37 constitute a new chapter in Title 50 RCW.

Passed by the Senate April 22, 2019.
Passed by the House April 11, 2019.
Approved by the Governor May 21, 2019.
Filed in Office of Secretary of State May 21, 2019.

--- END ---

ADDENDUM IV

Recruitment and Referral Process

Shared Goal: Make it easy for workers to connect to employers. Increase # of applicants, increase % that result in hired

Ideas Brainstorm

- Explore "able and available" wording compared to requirement to commit to completing to end of contract
 - > is there a way to capture data re: those disqualified due to this barrier of commitment to completing contract
 - > additional clarification/communication about what they can/cannot compel a farmworker to commit to
- Improved connection between UI process and recruitment process
- More data about recruitment process (hired, not hired, etc) (see page 10 from Nov meeting)
- More data about number of workers / H2A workers in WA State
- Further exploration needed - page 3 - can these turn into action items? and future agenda items
- intersection between WorkSource processes and employer
- Use of H2A to distort labor market and to still recruit without adopting competitive practices
- Work with industry on building incentives for hiring local workers (safety, environment, treatment)

Verification Process Ideas Brainstorm

- Deeper conversations about field checks and visits (response to complaints and other means)
- Improve relationships with community based organizations, unions, etc - improve community feeling

How do we get forward momentum and move forward?

- include difficulty within current legislative structure to be able to make the recommendations happen - is it budget/rules change (what are the needed components)
- determine which ideas can be implemented by ESD vs require formal recommendations - committee to vote on both types of recommendations

ADDENDUM V

Minutes

**Agricultural and Seasonal Workforce Services
Advisory Committee****Meeting details**

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Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Erik Nicholson

Committee members absent

- Ramon Torres

ESD staff

- Dan Zeitlin
- Alberto Isiordia
- Gustavo Aviles
- Norma Chavez
- Tamara Johnson
- Rene Maldonado

Non-voting agency representatives

- Alejandro Sanchez
- Anne Soiza
- Todd Phillips
- Uriel Iniguez
- Ignacio Marquez
- Dave Gifford
- Maggie Leland

Summary**Welcome and Introductions**

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked them to introduce themselves.

Agenda

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. There were no questions. (See Addendum I.)

COVID-19 Discussion:

- Governor's Office – Alejandro Sanchez
- Labor and Industries – Uriel Iniguez , Maggie Leland, & Anne Soiza
- Department of Health – Todd Phillips & David Gifford
- ESD Policy, Data, Performance and Integrity – Dan Zeitlin
- Department of Agriculture – Ignacio Marquez

Minutes

DAN ZEITLIN (ESD): What would committee members like to discuss today? Also, we have Alejandro to speak on behalf of the Governor's office and we'll have the various agencies present based on topics that folks want to discuss.

MICHELE BESSO (NWJP): Temporary worker housing, the guidance that came out from public health and the draft guidance from L&I. How it's going on the ground with the influx of H2A workers?

JON DEVANEY (WSTFA): Three factsheets that were circulated by L&I. Is COVID-19 a potential workplace injury for workers comp purposes?

MIKE GEMPLER (WGL): Recommendations from L&I and temporary worker housing.

ROSALINDA GUILLEN (CC): Quarantining in farm labor camps and farmworker community in general and the economic health for farmworkers and pending arrival dates of H2A workers.

ROSELLA MOSBY (MF): The impact on the employers financially and economic support for farmers when it comes to housing and implementing all the new safety guidelines.

ERIK NICHOLSON (UFW): L&I guidance that has come out, the quarantine facilities in rural areas, economic assistance, paid sick leave, and workers urgent need for daycare.

DELIA PENA (ZFC): I would like to talk about housing requirements; L&I.

RAMON: ABSENT

DAN ZEITLIN (ESD): We will have Alejandro from the Governor's office to provide his view on these issues and then we will turn to L&I for a presentation on their guidance.

ALEJANDRO SANCHEZ (GOV): Public policy is waiting to see what the terms of the grant stimulus will be and then they will figure out how they're going to be able to allocate the childcare funding. It is primarily to be used for the childcare for first responders such as medical workers. I realize there are a lot of families outside the medical context that will need childcare. That is something we are going to have to have as an expectation. I will update this group immediately as soon as I get more information.

ERIK NICHOLSON (UFW): We are hearing increasing reports of people going hungry because of dramatically increased daycare expenses. Could we engage in this conversation with the Governor's office to try to take care of the medical workers and farmworkers? Without farmworkers to feed the medical workers the whole system collapses.

ALEJANDRO SANCHEZ (GOV): I'll see where they are, and I will get back to you.

I did ask the group if they have any thoughts on additional messaging we could put out. I don't know if it's made it onto the website yet but to reemphasize what I said last time, we want to try to alleviate some of the fear farmworkers may have about this essential/nonessential designation. We are willing to add whatever else needs to be in that bulletin or elsewhere.

We talked a little bit last time about the regional isolation centers and those are still being stood up by the Counties. Grants are made to the counties to identify the areas; how many beds are needed, but it's not finalized. This is an alternative for people who need to isolate out of congregate housing. It was not my intention to convey that people would be forced to go there.

Minutes

ROSALINDA GUILLEN (CTC): What is the total dollar amount of the grant going to the counties?

ALEJANDRO SANCHEZ (GOV): \$30 million from the state and I think there are other dollars from the Feds for isolation centers

ROSALINDA GUILLEN (CTC): Is the \$30 million in general for all workers or for all people? Is there any specific designation of specific dollars for farmworkers or agriculture?

ALEJANDRO SANCHEZ (GOV): For regional isolation centers? No, it's not specified by industry, it's to have centers in each region. It is based on the scientific model on what they predict will be the need for the whole state.

ROSALINDA GUILLEN (CTC): The scientific model based on need, is there a timeline to that? Is there a projected time for when the need will no longer be needed?

ALEJANDRO SANCHEZ (GOV): I am sure there is based on public health data but that is outside my scope of expertise.

ERIK NICHOLSON (UFW): How would we engage with those facilities to ensure that people that need to access those facilities can get them; and to make sure that they are treated fairly and respectfully?

ALEJANDRO SANCHEZ (GOV): It will be at the county level, through their local county health departments. I think it's ramping up right now, I don't know what the actual timeline is to be all in place.

ROSALINDA GUILLEN (CTC): Will you check on that timeline?

ALEJANDRO SANCHEZ (GOV): Yes, I am happy to.

DAN ZEITLIN (ESD): Does anyone have other questions for Alejandro on the ground he covered?

MIKE GEMPLER: I'd like a more detailed explanation of the quarantine plan in rural communities and how the funding you described relates to that. It is an issue of great concern.

ALEJANDRO SANCHEZ (GOV): I think I can't really answer that effectively because it is a County by County plan so it's going to be different in one county than another and how they're going to manage it. If you have a specific question about a county, I can try to find that out.

MIKE GEMPLER (WGL): Points of contact for the key agricultural counties would be appreciated.

ALEJANDRO SANCHEZ (GOV): I'm happy to provide a list of contacts if you let me know which counties.

MICHELE BESSO (NWJP): I realize it's going to be County by County but have there been discussions? Are we looking at unused motels or hotels? Are they talking about putting up tents? What is this looking like?

ALEJANDRO SANCHEZ (GOV): I think it is going to be a range. If you get me a list of the counties that you're most interested in I can go back in and find out more specifics about what they've presented back to our Department of Commerce.

DAN ZEITLIN (ESD): Should we just name counties here?

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MIKE GEMPLER (WGL): Whatcom, Snohomish, Okanagan, Chelan, Douglas, Kittitas, Grant, Adams, Yakima, Skagit, Benton, Franklin, Walla Walla, King, Pierce, Lewis, and Clark. We are quickly getting to all the counties because there is agriculture in most areas.

ALEJANDRO SANCHEZ (GOV): I will see if I can get a unified document. I think the local health jurisdictions are working on this.

MIKE GEMPLER (WGL): It is critical to know and understand the process for being able to take someone from a housing facility to a quarantine facility, to call and how quickly you can get them there.

ALEJANDRO SANCHEZ (GOV): I will dive in deeper on that.

DAN ZEITLIN (ESD): Let's turn it over to Anne Soiza from L&I.

ANNE SOIZA (L&I): Ag is one of our areas of interest, in terms of trying to keep up with the change about policies from CDC and what we're learning about the disease.

We are here to explain and introduce our strategy and our future. In this past week, we issued a compliance directive for all employers. We have also issued fact sheets for other industries. That directive was a big piece of work for us to get that out to help employers and workers understand with expectations.

The basic goal is to prevent the spread of this pathogen and to be clear about the expectations from L&I. We are very serious about helping workers and employers in their desire to stop the spread of this disease. We broke it up into three sections. We have the Coronavirus Prevention in Agriculture, which is the baseline document that applies across agriculture and related businesses. We have prepared two supplemental factsheets one for Temporary Worker Housing and one for Agriculture Processing and Warehouse Operations. The temporary worker housing challenge of having social distancing is a real big hurdle.

We are asking for your comments on these documents. Please let us know by midnight on Friday night. Our goal for these factsheets, is clarity to meet the expectations of what employers and employees need to know about their industry.

JEFF KILLIP (L&I): The only thing I would like to add is the main factsheet for agriculture, incorporates the four-part plan for the Coronavirus Workplace Prevention factsheet and is part of the Governor's proclamation Stay Home, Stay Healthy order. It also is based on existing DOSH regulations for workplace safety with the four-part messaging: social distancing, handwashing/surface sanitation, sick workers and Coronavirus education. Those four items are requirements and we are trying to make sure that the fact sheets are clear regarding what's required versus what is a suggestion or idea in order to achieve the expectations that are delineated.

ERIK NICHOLSON (UFW): Are these factsheets or requirements? They don't appear to be rules. I think a huge question we have is the enforceability. What is required, how it will be enforced and what are the consequences for failure to comply. Can you clarify those issues?

ANNE SOIZA (L&I): The compliance directive that we have points to the Governor's directive.

We have regulations in Washington state which are unique compared to other States. We are using those regulations to apply to this situation. In the workplace, if it doesn't appear that that code is being

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complied with, we issue violations. We do proactive inspections as well as complaint triggered inspections. The factsheets are a quick reference with the stated code, with what, where and when something must be done. Then, suggestions are offered to help meet those expectations. We have tried to help educate the employers and their workers to understand how the disease can be transmitted and what are the best things to practice in order to prevent the transmission from person to person. We would like to partner with anyone to assist with getting this information and education out there.

We also have the largest consultation program for Occupational Safety and Health Administration in the United States and we have consultants all over the state who are able and willing to either help employers on the phone or actually go out physically to take a look at temporary worker housing or their farm or dairy or whatever operations they have where they may need assistance.

ERIK NICHOLSON (UFW): I think what I would ask is to look at the degree to which taxpayer dollars are being used to offset the cost of the H2A program. I would ask us as a committee to keep an eye on this. to make sure that farmworkers have the dignified isolation facilities and medical attention but after 9.5-billion-dollar bailout to the growers and now \$30 million dollars being allocated for these isolation facilities of taxpayer money and we still can't ensure that 100% of farmworkers get paid sick leave.

ROSALINDA GUILLEN (CTC): You mentioned about administrative and engineering controls could you explain what that is? And to our partners, what are you doing with farmers and growers?

ANNE SOIZA (L&I): Engineering controls are a concept where the first thing that you do is you arrange work, you arrange protections and you minimize the source of the hazard. In this case, in which pathogen spreads through the air through droplets, one of the main engineering things that is being used in a wide variety of industries is the use of physical barriers. An example of an administrative control could mean a situation where they reduce the amount of human contact potential by not overlapping work shifts or even giving an hour between shifts, which limits the amount of people in the building, in the parking lot, etc.

MIKE GEMPLER (WGL): As far as engineering controls, one immediate concern was with housing. We are looking at an enclosure for the bottom bunks of bunk beds, like a train berth, enclosed on three sides with the curtain on the open side. We are waiting to find out if our design is acceptable or not from the Department of Health and Department of Labor and Industries. So many of our facilities are filled with bunk beds we want to make sure to get approval and keep people safe.

ROSALINDA GUILLEN (CTC): How long does this process take to get approval once an idea is submitted to DOH and L&I?

ANNE SOIZA (L&I): We just got this idea in and we are working with Department of Health to respond safely and timely. We anticipate giving them feedback with a matter of days. However, there's a lot that we know and don't know about this pathogen. We want to provide feedback back to the employer for their consideration and implementation whether an idea is excellent or needs to be modified in a particular manner..

MIKE GEMPLER (WGL): In the Temporary Housing draft there is no process for approval presented. There are suggestions so an employer might implement something but there is no required approval process as far as I can see in this document. We wanted to get input from DOH & L&I.

ROSALINDA GUILLEN (CTC): That was going to be my question, is this a timely process for the farmers? Is this optional? You are only hearing from the proactive employers what they are doing. In the

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meantime, Mike, are you moving forward with implementing these engineering controls or are you waiting to hear from DOH and L&I?

MIKE GEMPLER (WGL): We are because it's early in the season were able to spread people out, we're only allowing two people per room. But that is only going to last so long because more people are coming growing season is starting.

ROSALINDA GUILLEN (CTC): According to what we know about approved applications there will be almost 11,000 workers here by May 1st and these numbers are only going to grow. My concern is if there's no approval required and there's no follow up, that these engineering or administrative changes may or may not be implemented.

MICHELE BESSO (NWJP): Follow-up question to pivot to ESD because if these are possible compliance directives will you be requiring some evidence or assurance of compliance with this in order to certify to the Department of Labor that the housing meets state standards?

DAN ZEITLIN (ESD): I will turn to Alberto or Norma or perhaps Todd, to answer this question.

NORMA CHAVEZ (ESD): We send applications to the Department of Health for checking temporary worker housing.

TODD PHILLIPS (DOH): I would send back our preoccupancy inspection to help certify or determine that the housing meets state rules for housing. Which the state rules are not set up for this situation.

MICHELE BESSO (NWJP): When you get these requests from ESD to certify whether the housing meets state standards how will you evaluate that?

TODD PHILLIPS (DOH): They would just accept or take our preoccupancy inspection or permit for that facility. To determine whether it is meeting that code for temporary worker housing and that is accepted by ESD as approved housing for workers.

ROSALINDA GUILLEN (CTC): But that is what was required prior to the pandemic, right?

TODD PHILLIPS (DOH): Yes, and the state codes have not changed. We have almost if not all inspected and permitted with the state rules. We are going to provide feedback for the temporary housing guidance, but it looks like a lot of the things that are in there are addressing what we see as needing to be addressed. It's an ever-changing situation and there are permits issued for housing already that ESD would use for approval or not.

ROSALINDA GUILLEN (CTC): This is very concerning there are 204 applications already approved by ESD. There is a total of 19,829 workers scheduled to be here by June 1st. I would imagine that most of the 204 applications approved or approved prior to the pandemic or very early on before we started addressing these issues. How are you going to backtrack and ensure the safety of the workers now?

TODD PHILLIPS (DOH): I understand and agree it is a concern. I believe that is why we are here today to try to help address the situation. I really appreciate L&I working on this to provide education and eventually enforcement on issues on how to keep the workplace safe.

ERIK NICHOLSON (UFW): Do you all have a plan to go back out and re-inspect temporary farmworker housing to ensure compliance with the factsheets that have been put forward?

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TODD PHILLIPS (DOH): We wouldn't necessarily be re-inspecting for permitting, but our inspectors are willing to go out and help and be a part of the process of making sure it's known how to address these situations. We have two inspectors that do our housing inspections..

ERIK NICHOLSON (UFW): In the last several weeks we are seeing widespread non-compliance with basic measures like a handwashing facilities, social distancing; especially when it comes to housing.

ERIK NICHOLSON (UFW): I would in the strongest terms ask that the agency reconsider and recognize there's a limitation of only two inspectors. If we want to avoid an outbreak, I think it is incumbent on the state to get out there proactively and reinspect every camp. We are putting H2A workers directly in harm's way. We have got to make sure there is compliance.

TODD PHILLIPS (DOH): It's important we partner with other state agencies. How we look at the bigger picture on how we might address the other pieces.

MICHELE BESSO (NWJP): Two years ago there was a lack of coordination between ESD, L&I and DOH to ensure that farmworker housing was going to be certified for H2A workers. There was a meeting at the Governor's office to pull all the agencies together and figure out how to make it happen. ESD must certify to USDOL that the housing meets state standards. Because of the way our state is set-up, ESD relies on Department of Health to have done the inspection. L&I is also involved if it doesn't fit in the jurisdiction of DOH or if there is a complaint. There is a memorandum of understanding that came out as part of that meeting, but it urgently needs to be reviewed and revised. At minimum, there needs to be a process of sending questionnaires out to employers to check off the measures they're taking to meet the new standards before certification of housing for H2A workers.

MIKE GEMPLER (WGL): I want to remind people that not every employee that stays in housing is an H2A worker. There are people arriving from all over the country now for asparagus harvest and other spring work.

MICHELE BESSO (NWJP): I agree we need to be concerned with all of them.

ROSALINDA GUILLEN (CTC): I think that you would be coordinating even more because if something should go wrong with 20,000 workers coming by June 1st, it's the entire community then that could be exposed. I just want to point it out, everybody is stressed out and anxiety levels are rising but this is a mandate that we accepted as farmworker representatives of this committee to bring to the table the concerns of the community.

TODD PHILLIPS (DOH): I appreciate everything you're saying, in a perfect world I was saying yes, we're going to be out there and that's what I want that's what I would like to do. I think our very good first step and what we have been spending our time on is trying to figure out the best tools to put out there to the owners of the homes, to the owners of the farms, to try and give them the best tools available to make good decisions and do things right. As we have those best tools it is my wish to get out to see every farm, but I can't tell you right now that that is possible.

MIKE GEMPLER (WGL): One of the greatest challenges we have is having enough sanitation supplies. Everything is on back order and if have these essential industries that are operating, and we have these expectations that we're going to be doing cleaning which we're doing. Alejandro could tell us if somebody's working on this?

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ERIK NICHOLSON (UFW): That is something that we discussed in our original letter to the Governor.

TODD PHILLIPS (DOH): We are running into the same issues, and my understanding that there is a statewide driver behind, and I keep raising issue.

MIKE GEMPLER (WGL): Is there is there somebody in the Governor's office or central emergency response person who's tracking availability of the cleaning supplies. Cleaning supplies are a major tool in addressing the potential exposure of COVID-19.

TODD PHILLIPS (DOH): I believe there is.

IGNACIO MARQUEZ (WSDA): I received an email from the State of Washington Department of Commerce asking whether there was any information from the agriculture industry as to needs to deal with COVID-19. They asked does agriculture industry need masks, gloves or hand sanitizers? I responded that we have been getting requests for cleaning supplies in housing. As to what they're going to be doing with that information, I'm not clear as to whether they are planning on buying a big purchase of all these tools and cleaning supplies that are needed, but at least the conversation is started. I will follow up with the Department of Commerce again to find out what the status is.

JON DEVANEY (WSTFA): I think that once we get this guidance out and employers have a clear idea of what the expectations from L&I that are going to be enforceable look like, they may see a very serious spike in demand for some specific items that can be used for cleaning or for mitigation.

ANNE SOIZA (L&I): Emergency Operations Center for state government and L&I health experts are working with the emergency operation center to purchase protective equipment, sanitizers, anything that's needed. I have been involved in personal protective equipment and sanitation supplies.

DAN ZEITLIN (ESD): How much time and what issues would each committee member like to spend as a group discussing next week?

MICHELE BESSO (NWJP): I'm very concerned about how the temporary worker housing work will move forward and getting the information out. I guess I'm just not sure whether this meeting will be a place where we can solve this problem. What I heard is sort of that same problem we had two years ago which is each agency kind of has its own silo and doesn't look at temporary worker housing as its primary responsibility.

JON DEVANEY (WSTFA): Two hours is about right for intensive focus however if we're going to try to cover every issue than the meetings need to be longer. We need to come back to Workers Comp, Paid Sick Leave, and Unemployment for next week.

MIKE GEMPLER (WGL): I would like to understand L&I's approach to coronavirus and workers compensation. There seems to be some conflicting statements particularly in this draft. In the last sentence it says COVID-19 is recognized as a very serious workplace hazard. I'm fine with longer meetings.

ROSALINDA GUILLEN (CTC): I'm fine with longer meetings if we if we're getting something done. I am really concerned about the quarantine and how that is developing. I want to drill down on what is enforceable because the farmers are waiting to know about the requirements.

ROSELLA MOSBY (MF): We are certainly not waiting for any guidelines to take steps to keep our employees safe. We are trusting our crew is making good choices and not bringing anything back to the

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farm where we live. I agree with everybody this is a huge concern and if we need to take a little bit more time then I'm in agreement.

ERIK NICHOLSON (UFW): We have the honor of finally being recognized as essential after decades of being ignored and disparaged. I think the challenge is how do we live up to the expectations that our society has put on us to keep people fed, while we're sheltering in place. To keep the growers and farmworkers safe and working, I am willing to do whatever is needed.

DELIA PENA (ZFC): I agree with everybody, I think the employer needs to know what is required to keep workers safe in both housing and working conditions.

DAN ZEITLIN (ESD): We will be back in touch with the group with an agenda for next week. I know we all appreciate this forum is here for these conversations. We know these are urgent matters and conversations are and should be occurring outside this meeting. I heard a desire to continue to have weekly meetings so long as there are productive.

Agenda Items for Next Meeting

- COVID-19
- Workers comp & Paid sick leave
- Report for legislature

Public Comments

None

Closing Comments

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 10:44 a.m.

2020 meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **April 16, 2020 – 8:30 a.m. to 12:30 p.m.**
Skype Meeting

Addendums

ADDENDUM I



Agenda

Agricultural and Seasonal Workforce Services (ASWS)
Advisory Committee
Thursday, April 9, 2020 | SKYPE

Agenda Items

Table with 2 columns: TIME and TOPIC. Rows include: 8:30 am Introductions, 8:40 am COVID-19 Discussion, 10:20 am Discuss next meeting agenda, 10:25 am Public Comments, 10:30 am Adjourn.

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

Contact information

Dan Zeitlin, Director of Policy, Data, Performance & Integrity Division DZeitlin@ESD.WA.GOV

Employment Security Department • Policy, Data, Performance and Integrity

ADDENDUM VI

Minutes



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, April 16, 2020

Time: 8:30 a.m. to 12:30 p.m.

Location: Skype meeting due to COVID-19

Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Erik Nicholson

Committee members absent

- Ramon Torres

ESD staff

- Dan Zeitlin
- Alberto Isiordia
- Gustavo Aviles
- Norma Chavez
- Tamara Johnson
- Rene Maldonado

Non-voting agency representatives

- Alejandro Sanchez
- Anne Soiza
- Todd Phillips
- Uriel Iñiguez
- Ignacio Marquez
- Dave Gifford
- Maggie Leland
- Jeff Killip
- Christina Rodriguez
- April Amundsen
- Anne Soiza

Summary

Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked them to introduce themselves.

Agenda

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. There were no questions. (See Addendum I.)

April 2, 2020 Meeting Minutes

Dan Zeitlin requested that everyone review the April 2, 2020 meeting minutes and provide their feedback. Michele Besso sent additions to Tamara for inclusion in the minutes. Meeting minutes will be corrected and presented at April 23, meeting for final approval.

Economic Security Discussion (COVID-19):

- L&I – Uriel Iniguez and Maggie Leland
 - Paid Sick Leave
 - Workers Compensation
- ESD Policy, Data, Performance and Integrity – Dan Zeitlin
 - Unemployment Insurance
- ESD Paid Family Medical Leave Program - April Amundson
 - Paid Family Medical Leave

**Unidentified speaker

APRIL AMUNDSON (ESD): PFML is a supplemental benefit. The employer pays premiums, the state makes the determination of whether somebody had a qualifying event. The state is paying the benefits not the employer. There is a backlog of people waiting since the program went live.

Workers in Washington have access to a variety of paid leave in connection with the coronavirus pandemic. Along with Washington's paid sick leave law, workers also may be able to use leave covered under the Washington Family Care Act and the new Federal Families First Coronavirus Response Act.

The Families First Coronavirus Response Act is federal legislation that took effect April 1 and expires on Dec. 31. It covers protections such as paid sick leave, UI, and other benefits. This federal law requires public employers and private businesses with fewer than 500 employees to provide paid leave directly related to the coronavirus pandemic, either for the worker's own health needs or to care for family members.

There are 2 temporary benefits under the new federal law that employers must provide to address the coronavirus pandemic:

- 80 hours of emergency paid sick leave when an employee experiences certain COVID-19 events.
- Up to 12 weeks of leave to care for a child under a temporary expansion of the federal Family and Medical Leave Act.

Here are some additional elements of the expanded Family and Medical Leave Act:

- The first two weeks of emergency leave are unpaid, but a worker may choose to be paid using emergency paid sick leave or other accrued paid leave.
- The emergency leave is provided at the worker's regular rate of pay, or two-thirds of the regular rate when caring for a child, subject to certain caps.

ROSALINDA GUILLEN (CC): How is it going to work in reality? What about when someone appears to be sick and may not have been diagnosed with COVID-19, may not have been seen a doctor, but their employer sends them home because they have some symptoms? Or, an employee has someone who contracted it and they want to stay home, and they still have vacation and sick leave how do we treat that?

APRIL AMUNDSON (ESD): Employees will use up their vacation and sick leave first and then PFML.

DAN ZEITLIN (ESD): There is a helpful chart that ESD put out with L&I when the crisis hit. It is available on our website and has several different scenarios to help determine which program a worker might be eligible for.

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MAGGIE LELAND (L&I): Workers compensation coverage can be considered a work-related exposure if: There is an increased risk or likelihood of contracting the condition.

The source of contact is what we consider.

- Health care workers or first responders are those that are most likely to be covered; Providing direct care to a person who has COVID-19
- Was contact likely due to contact with a family member or other members of the community?
- Can a worker identify a specific source or event during the performance of their job where they were exposed to the virus?
- Info on website – will send to committee

When we look at agricultural workers it seems that it would be likely, though it will be reviewed on a case by case basis with work-related evidence, that the claim should be accepted. The specific facts apply to the circumstances where a worker needs to be quarantined because, for example, they were near someone with the disease. If a worker believes they meet the criteria and they believe worker's compensation makes sense, then they should submit a claim.

It can be done online. To get the claims process going, even if there's not any information from a doctor. We can still work through getting that information as the claim progresses. There's some really good information on our website. There could be workers compensation benefits, as the information changes throughout the course of this pandemic.

MIKE GEMPLER (WGL): The employee should and usually does facilitate the call to the local clinic. They ask the person questions about what their symptoms are and they may tell them to stay home and if the symptoms get worse to call in again. The clinic does telephone triage to determine if that person should come into the clinic for a test. If it is determined they need to be tested, they have a person use a special entrance away from other people, give them the COVID-19 test and then send them back to where they were quarantined and wait for the results of the test. I think it can happen quickly because the clinics in the rural areas are there all geared up for it and they are all telling people what to do.

MAGGIE LELAND (L&I): There is good information on DOH's website as well that we can send that goes through questions around testing we'll be sure to send the information so you can also look it up.

DAN ZEITLIN (ESD): This is a historic moment in a lot of ways and that certainly is the case regarding the incredible influx we've seen in UI applications since the crisis began. We've been averaging up to or over 7 times the number of weekly UI (UI) applications than we did during the peak of the recession.

We've had over 1/2 million submit claims for UI which is really a historic number. Last week, we paid \$126 million over 255 thousand individuals filing for UI. This has been a big challenge for us as an agency. Staffing levels went from 300 to 500 this week and we should have 1000 folks handling claims starting next week. .

UI provides partial wage replacement for up to 26 weeks for individuals who have worked 680 hours in their base year, that's having worked 680 hours in the last four quarters or four or five quarters and are in covered employment. UI is financed by employers who pay an experience rated tax based on the number of workers they employ and social taxes as well to finance our state UI trust fund.

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In 2019 we had 163,957 domestic workers in the agriculture industry that were covered or could be covered by the state UI system. That represents a little over 4% of total workers in all industries in our state. Individuals who are not covered or those who don't make that requirement to have work 680 hours in their base year are usually self-employed, independent contractors, or in an exempt occupation including farm students and interns, as well as small farms paying less than \$20,000 in wages per quarter. I should also note that undocumented workers are not covered by UI. .

Congress passed the second bill in response to the COVID-19 outbreak, the Families First Coronavirus Response Act, which gave ESD some emergency administrative funding to help manage the influx of claims and provided flexibility with some regular UI requirements.

We waived the waiting week; folks can get paid the first week they applied for UI. Legislation is allowing for flexibility of work search to collect UI (if off from your job through no fault of your own you're required to be able available and searching for work). Because of Stay Home Stay Safe order and the limited amount of economic activity we have temporarily waived the work search requirement and made it optional.

The CARES Act then made enormous changes to UI. It added three unemployment assistance programs: Pandemic Unemployment Assistance, additional amounts to provide along with a weekly benefit amount to those applying for UI, and an increase in the number of weeks for which one can claim UI.

The Pandemic Unemployment Assistance Program is a program that was modeled after disaster unemployment assistance. Prior to this disaster if the President declared a major disaster in the state or an area impacted by disaster such as an earthquake or hurricane, Disaster, Unemployment Assistance would become available to those not normally covered by regular UI.

Congress authorized this Panedmeic Unemployment Assistance program to similarly provide UI to independent contractors, the self employed, occupations that are exempt from our state statute or to those working less than 680 hours. It is authorized effective back to February 2nd and will run through the end of the year. We've had to do a lot of work updating our system to be able to accommodate these programs.

Another key piece of the CARES Act is the Pandemic Unemployment Compensation Program. If you are claiming any unemployment benefit for a week you will get an extra \$600 on that retroactive to March 29 and for the next four months.

Finally, Congress authorized a Pandemic Emergency Unemployment Compensation Program which provides 13 additional weeks of UI. Again, our regular state UI program allows for up to 26 weeks of benefits and now with this authorization, up to 39 weeks of benefits will be available. As I mentioned at the top, our unemployment trust fund is financed by employers. These programs are all financed by the federal government. Payments made for that waiting week, for pandemic unemployment assistance, the extra \$600 a week, and the extra 13 weeks of coverage, those are all a huge influx of payments covered by the federal government

MIKE GEMPLER (WGL):: Has the UI advisory committee met yet to assess the impact on the UI system then do projections?

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DAN ZEITLIN (ESD): We have not. I think our next projections come out in May. So why don't I take that as a request since you're on the committee and make sure that we have that meeting virtually. I can say that when we went into the crisis we had roughly 4.7 billion dollars in the trust fund. Obviously this is an historic influx of payments. I think that that's an important presentation.

MIKE GEMPLER (WGL):: I think that as a former member of that committee I think it's important for people to know that the Washington State fund is typically much healthier than the UI funds in other states and they've been conservative in their management. Our state should be able to weather this better than many other states.

DAN ZEITLIN (ESD): I would also second what you said about other states and that may lead to some action by Congress in future federal bills. States can take out interest free loans for up to three years. Congress may look at that issue given the impact this is having across trust funds throughout the nation but as Mike said we have a strong trust fund.

ERIK NICHOLSON (UFW): We looked at the number of referrals ESD was making to agricultural employers that were soliciting H2A workers. I'm wondering what kind of visibility you have in terms of having those numbers and any increase in referrals?

ALBERTO ISIODIA (ESD): We have been having those conversations already to change the referral system and try to improve job orders and how we're recruiting for domestic workers. We have already made some suggestions to the offices in relation to virtually contacting the employers and workers when new job orders are received.

MICHELE BESSO (NWJP): There's been ongoing issues around access by farm workers to the web-based UI system. Can you also provide information on how many people have applied for UI benefits.

DAN ZEITLIN (ESD): I will check with our operations folks to see if that's a data point that we can track. You're asking how many have applied in the agriculture industry and what percentage are from agriculture that have been approved?

MIKE GEMPLER (WGL): Regarding the undocumented issue, employers accept documents from employees to prove their identity and eligibility, and as far as they know they are legal and authorized to work in United States. If somebody is using false documentation, unknown to the employer, if that person applies for UI is ESD using the E-Verify system or anything else to check an applicant's authorization to work in the US and an eligibility for UI?

DAN ZEITLIN (ESD): If a person files a claim then they must provide employment authorization documentation that is automatically checked with the USCIS SAVE program.

DAN ZEITLIN (ESD): We are going to move on to a discussion about health and safety.

ANNE SOIZA (L&I): Our goal especially for COVID-19 is to get our most serious complaints assigned for inspection within 24 hours. Our factsheets will be issued in English and Spanish; we will be translating it into other languages as well as we as we go forward. We want them to be useful to help employers and employees understand what to do when it comes to keeping themselves safe. We tried to be very clear about what is required and what are suggestions and ideas on how to accomplish those requirements

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because we want to make sure that they have some ideas about how to accomplish those requirements. We did include our consultation services to help employers provide a safe and healthy worksite.

ERIK NICHOLSON (UFW): Is there an obligation on the employer to inform employees of the presence of a COVID-19 positive supervisor or co-worker without disclosing their name?

JON DEVANEY (WSTFA): My understanding this the local health districts are supposed to do a trace exposure and then contact those individuals directly. The concern that I've heard from a number of growers especially when you have employees who live or work in different adjacent counties is that those County Health Department policies are not necessarily consistent.

MICHELE BESSO (NWJP): I am trying to understand if there was possible exposure who had tested positive and you just send people home without any information. How will they know whether they need to be taking precautions; whether they might have been exposed to the virus?

ANNE SOIZA (L&I): We want employers to follow their local health department recommendations with the handling of their worker population and their contact tracing.

MICHELE BESSO (NWJP): I'm trying to determine is there a cleaner more direct line between the State Department of Health guidelines and relationship between local county health departments.

ERIK NICHOLSON (UFW): I've been watching with concern is going on at Tyson and I think it would be good if L&I had direct oversight in terms of what the counties are doing. We need to make sure we have a strong enforcement. When we've got a very clean enforcement mechanism in terms of making sure that the counties are doing what they are supposed to do, then employers are in compliance, and if they are not, we know.

ANNE SOIZA (L&I): We expect them to cooperate with the local health department but also if they have an employee who gets too sick to work, they must have procedures to follow. They handle with the medical advice that is an effect at that time. Employers must require separate places, to stay home or stay in isolation.

MIKE GEMPLER (WGL): The second bullet point says develop a process for immediate shutdown in the case a sick employee was present. When you say sick employees does that mean someone who has tested positive for COVID-19 or someone who is suspected?

ANNE SOIZA (L&I): If somebody is sick because they they're coughing and have a fever, displaying flu-like symptoms, in that case a good best practice would be to develop a process that includes immediate shutdown of the areas, thoroughly sanitizing and then open it back up again.

BREAK FROM 10:55 – 11:15

COVID-19 Health and Safety Guidance:

- DOH – Todd Phillips and Dave Gifford
- L&I – Uriel Iniguez and Maggie Leland
- WSDA – Ignacio Marquez
- ESD – Norma Chavez

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DAN ZEITLIN (ESD): I understand recent legal actions were filed therefore L&I and Department of Health are unable to further talk about the housing health and safety guidance. I'm going to suggest that we pivot to a discussion about H2A program. I think we can do this by taking any questions that members may have about the H2A program and Norma can let us know what she's doing to stand up the office.

MICHELE BESSO (NWJP): I'd love to get an update from Norma as to who she's got working with her and what they're doing.

NORMA CHAVEZ (ESD): We started with having monthly meetings, but with COVID-19 we have transitioned to having weekly meetings so we could update committee members, interested parties, and other state agencies and what we're doing to help during the pandemic.

I'm hoping that we can get back to the business. I started with ESD on January 2nd, 2020. The office quickly developed in the last 2 1/2 months. We have three transfers into the FLC positions, Cara Mia Stearns-Vance, Ana Alcalá-Rodríguez and Petra Meraz. We also have our Washington State Monitor Advocate, Rene Maldonado, moved to the ASWS group. I think the thought process was that since he's doing monitoring it would be more of a natural fit to be under a compliance unit. We also had Tamara Johnson transfer as our Administrative Assistant.

The conversations we're having now are for our compliance unit. Looking at the numbers right now and looking at the services we provide we will have people more strategically placed based on applications that we have in specific areas. FLC staff are training offices to make sure that those job orders are coming through and trying to beef up the effort with what they're doing for recruitment and referrals.

RENE MALDONADO (ESD): We are working diligently right now to ensure that workers are made aware of resources. We've been leveraging our staff, they have been calling on workers, calling employers, providing services, and finding out what is needed out in the community.

DAN ZEITLIN (ESD): One thing I want to note about Rene joining Norma's office, it made sense as there is an alignment in vision and mission between the State Monitor Advocate and the work Norma's office is doing, but funding wise Renee is funded through Wagner-Peyser.

NORMA CHAVEZ (ESD): Thank you for noting that as that's an important piece of information having also started having conversations with Kelly Lindseth in Employment Connections on how we're going to deal with some of the business needs and changes that we foresee.

DAN ZEITLIN (ESD): To follow through on what Norma said this is an advisory committee and we welcome suggestions here today on how you see the role of this office and the migrant seasonal farmworkers. Our world has changed significantly since this office was established and that includes not only potential impacts to the H2A program but also domestic workers.

MICHELE BESSO (NWJP): Can you give us any changes or any proactive actions you're taking to recruit domestic workers right now; why not slow down the approval of H2A applications?

NORMA CHAVEZ (ESD): We've been having weekly discussions with our outreach staff on making contacts as some of you had suggested in prior meeting.

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Working with the employers and workers, making sure referrals are being made and the job leads are solid. I think part of that is having conversations with our communications manager and trying to coordinate with L&I and DOH so there isn't as much confusion when putting out communications. Some of our outreach workers are using Facebook and have started talking to people that have communicated with them to obtain jobs. I think that we could see what type of numbers we're seeing in changing some of our approach. As far as more labor certifications are coming, USDOL is in charge of the program but at this point they have not stopped labor certification applications. Employers could go straight to USDOL to make application, so they have the choice of not going through Washington.

The MSW significant offices are starting to communicate with those that have not participated prior but you have H2A job orders in non MSFW offices too and that's where I indicated we're starting to train them done office by office.

MICHELE BESSO (NWJP): I know it's difficult I mean we're working under such strange circumstances, but I just wondered if there is if you're seeing interest in the community for jobs?

ALBERTO ISIRDIA (ESD): Work source offices are physically closed so that may have an impact as well on our ability to steer people to jobs. In terms of how we measure the interest out in the community, we do track any requests for jobs. There are a lot of questions on L&I and how to access UI and get help. If you want more of a detailed list of what's been asked, we can add that for next week for the committee to review.

MIKE GEMPLER (WGL): This is a ramp up time for agriculture and people are being hired to work. I'm not aware of many people, if any, being laid off. There might be individual farms that are experiencing some market failure due in part to the food service sector collapsing, but now is when we're hiring.

ALBERTO ISIRDIA (ESD): From an operations perspective we are working very closely with our UI division given the unprecedented number of claims that have been filed. We continue to have staff engage with partners and with farmworkers.

MICHELE BESSO (NWJP): I'm still interested in following up on the idea of having information pulled together to give to H2A workers on their arrival because I am concerned that they will come and not have gotten the all the messaging they need to have in terms of prevention. Also, do we want to discuss as a group Health Department reporting and whether we want to make an ask for uniformity in that whole process?

NORMA CHAVEZ: We have been collecting some information from about nine health districts right now and you're right the information is different in each district.

JON DEVANEY (WSTFA): I think that was clear from the guidance that we saw earlier from L&I. I don't know that we can get a single document with all appropriate points of contact statewide. It might be better to reinforce the requirement, that every employee needs to be trained on these measures and resources and leave it up to individual employers to make sure that they have the local health district contact information.

MICHELE BESSO (NWJP): I think one of my real concerns is that the workers understand the connection to clinics, and the health district to be able to be able to consult if they do have symptoms. It is important that it is easily legible. Mostly infographics about steps to protect themselves. My last concern was making

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sure workers understand some of the benefits they might be eligible for if they can't work. I know it's a concern they don't tend to have money on them and so if H2A workers can't work for two weeks they're going to be out of food.

MIKE GEMPLER (WGL): I received an email last night from L&I on bunk bed safety. They denied it as written, but I have a call scheduled with them. We need to work out the details so that they fully understand what we mean. I think they thought that our beds were still 3 feet apart, when they are 6 feet or more.

ROSELLA MOSBY (MF): It's an economically ruinous decision. We want to prevent any outbreak, we don't want anybody to get sick, so we must find ways to accomplish social distancing and still have the people we need to work. I think that's the balance.

ROSALINDA GUILLEN (CC): If there's no place for them to live they're not coming up and, it's been slower than usual there's been significant delays, they're not coming up as they were scheduled to come up because of delays in Mexico; mostly due to logistical issues so people are weeks or even months late.

** : It would be helpful to know what the reality of the arrival date for these workers is, in what regions they are arriving because I think that that gives us the focus of trying to understand where we need to expedite some of these services.

ERIK NICHOLSON (UFW): We need to figure it out and implement whatever rules and regulations need to be done to make it happen so that people can trust the system right now.

NORMA CHAVEZ (ESD): We can provide information as to the change of requests and the request of workers and those contracts, however we cannot indicate the number of workers that are coming because there's no port of entry where we could substantiate those numbers.

MICHELE BESSO (NWJP): Is there a mechanism to say "x" amount of workers arrived in Washington and they arrived in this County? Farmers should have a tally on the numbers.

NORMA CHAVEZ (ESD): We would have to go to each employer and start asking that on a regular basis, but is it possible.

MIKE GEMPLER (WGL): I think people could voluntarily report the number of people they got in and that were able to cross the border, it's a possibility and there are several different agents and individuals who are facilitating crossing the border. Could we put out a request to all growers who have submitted applications for an update on how many people have crossed?

JON DEVANEY (WSTFA): County health districts have reached out to me making sure that they have the contact information for growers in their area. They are sending out advisories through multiple channels to major counties. The local health districts know where H2A workers are planning to be and who those employers are so that they have communication, they are tracking statistical information on how and what percentage of scheduled workers have arrived, and where there have been delays.

DAN ZEITLIN (ESD): We will take it as an action item to provide the data that we do have, the number of workers projected to come, and where they are located; and from employers willing to share, we will find out how many actually arrive.

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MIKE GEMPLER (WGL): There was a statement made earlier that L&I can't comment on farm worker safety issues any further because of recent legal action. Can someone give more details on who filed it what's going on?

MAGGIE LELAND (L&I): We were trying to summarize we weren't going to talk anymore about the temporary worker housing guide and in part because we are still working on those and we also have a writ of mandamus request to do emergency rules so there's current legal action.

MIKE GEMPLER (WGL): Can you tell us who?

MAGGIE LELAND (L&I): I believe some of the parties are currently in this meeting.

ERIK NICHOLSON (UFW): UFW is a one of the parties.

DAN ZEITLIN (ESD): Our report is due to the legislature in October, so I'd like to suggest that we start to focus more on those issues at the next meeting. More discussion about domestic workforce and recruitment. We want to start talking about budget issues beginning with our foreign labor certification grant. I'd like to go around to each member and get their thoughts on what they would like to discuss at the next meeting.

JON DEVANEY (WSTFA): We need to get back to our action items. I would like additional discussion but if we can't talk about with the agencies about some of these issues, that we are working on then there's not a point.

MAGGIE LELAND (L&I): Again, it's not that we can't or won't talk about it, we just don't have any updates from what we've talked about in the past.

MIKE GEMPLER (WGL): The next meeting I just think we need to deal with the most important issues at hand and in particular the response of the agencies preventing outbreaks in agriculture industry and how we can work together to do that while protecting jobs and not doing significant damage to the industry.

ERIK NICHOLSON: I think we should meet next week as we've got some pending items that Alejandro is going to forward about isolation camps. I would welcome having a conversation about an opportunity to leverage some of the 9.5 billion dollars that's been allocated to bailout specialty crops.

DELIA PENA (ZFC): I agree with continuing the discussions.

DAN ZEITLIN (ESD): I'm hearing a majority want to continue discussing these issues on a regular basis so we will put more time on the calendar next week.

~End discussion

Agenda Items for Next Meeting

- COVID-19
- ASWS Office Update
- FLC Grant 101

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Public Comments

Dan Fazio – Wafla

Eddie Kasner – UW School of Public Health (Addendum II.)

Closing Comments

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 12:44 a.m.

2020 Meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **April 23, 2020 – 8:30 a.m. to 12:30 p.m.**
Skype Meeting

Addendums

ADDENDUM I



Agenda

Agricultural and Seasonal Workforce Services (ASWS)
 Advisory Committee
 Thursday, April 16, 2020 | 8:30 am – 12:30 pm | SKYPE

Agenda Items

TIME	TOPIC
8:30 am	Introductions <ul style="list-style-type: none"> Welcome from Dan Zeitlin, Director, ESD Policy, Data, Performance and Integrity Division & Norma Chavez, Director – Agricultural and Seasonal Workforce Services Agenda Review
8:35 am	Approval of April 2, 2020 Meeting Minutes
8:40 am	Governor’s Office – Alejandro Sanchez <ul style="list-style-type: none"> Updates
9:10 am	<u>Economic Security Discussion (COVID-19):</u> <ul style="list-style-type: none"> L&I – Uriel Iniguez and Maggie Leland <ul style="list-style-type: none"> Paid Sick Leave Workers Compensation ESD Policy, Data, Performance and Integrity – Dan Zeitlin <ul style="list-style-type: none"> Unemployment Insurance ESD Paid Family Medical Leave Program - April Amundson <ul style="list-style-type: none"> Paid Family Medical Leave
10:40 am	BREAK (20 min)
11:00 am	<u>COVID-19 Health and Safety Guidance:</u> <ul style="list-style-type: none"> DOH – Todd Phillips and Dave Gifford L&I – Uriel Iniguez and Maggie Leland WSDA – Ignacio Marquez ESD – Norma Chavez
12:15pm	<u>Discuss next meeting agenda:</u> <ul style="list-style-type: none"> ASWS Office Update FLC Grant 101
12:25 pm	Public Comments
12:30 pm	Adjourn

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

ADDENDUM II



**PACIFIC NORTHWEST AGRICULTURAL
SAFETY AND HEALTH CENTER**



April 22, 2020

Agricultural and Seasonal Workforce Services Advisory Committee,

The 2019 Novel Coronavirus Outbreak presents extraordinary challenges to agricultural producers and workers who are part of the essential workforce under federal and state orders. While thousands of workers arrive in the Northwest and the labor force ramps up activities in the coming weeks, the industry has been tasked with navigating rapidly changing information about safely managing day-to-day operations. Resources are needed for proper infection control, mitigation of farmworker vulnerabilities, and mental health support for producers, workers, and their families as they grapple with sustained economic, social, and environmental pressures of the pandemic.

The Pacific Northwest Agricultural Safety and Health (PNASH) Center conducts research and promotes best safety and health practices for Northwest producers, workers, and communities. PNASH supports the coordinated efforts and alignment of the Washington State Departments of Health, Labor and Industries, Agriculture, and Employment Security Department. We offer our technical assistance to find practical solutions and echo the set of immediate concerns listed in [your letter to Governor Inslee](#) (p.10) last month. It is essential to reduce the number of cases and deaths. To achieve this requires actions far beyond traditional health and safety practices. We urge the Committee to help identify solutions for three items of critical importance:

Facilities for adequate hand washing and disinfection in fields and housing areas must be present. Workers need clear guidance that they should be washing frequently with soap and water for at least 20 seconds. This behavior reduces transmission. We encourage employers and employees to exercise continuous reasonable efforts to ensure disinfection protocols are maintained in housing areas.

Physical distancing of 6 feet or more is critical for all aspects of farmworker life: field work, transportation, and housing. Emerging scientific evidence shows that SARS-CoV-2 is shed to the environment as expired particles, during toileting, and through contact with fomites. Solutions are needed for preventing transmission through direct and indirect contact, especially indoors.

Immediate access to medical care for workers exhibiting COVID-19 symptoms. Symptomatic workers need to be removed from the workplace and provided with appropriate health care. Isolation, contact tracing, and screening protocols should be clear and coordinated with local and state public health authorities. To the greatest extent possible, affected workers should be supported financially until their illness passes.

These solutions must involve educating workers in the language they understand best about preventing transmission. We stand ready to leverage resources from health science and land grant universities connected to our center and the national network of [U.S Centers for Agricultural Safety and Health](#), funded by the Centers for Disease Control and Prevention. Please contact us if we can be of any help with this public health emergency.

Sincerely,

PNASH Internal Advisory Committee (undersigned)

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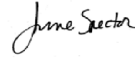
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