

PROPOSED RULEMAKING HEARING

DATE: 2-26-19

TIME: 8:00 A.M.

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

PRESENT: Scott Michael, Esq.

Legal Services Coordination Manager

Mariana Hernandez,

Employment Security Department, policy unit

Erin Blades,

Employment Security Department, policy unit

Anne Paxton,

Unemployment Law Project

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

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

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

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

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

19 Could you please introduce yourselves.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 MS. PAXTON: Thank you.

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

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

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

18 MR. MICHAEL: Okay.

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

21 MR. MICHAEL: This is your opportunity --

22 MS. PAXTON: Okay.

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

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

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

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

15 MS. PAXTON: Yeah, okay. Okay.

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

19 MS. PAXTON: Okay.

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

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

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

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

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

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

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

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

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

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

7 (Pause in the proceedings.)

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

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

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

13 (Exhibit 1 marked.)

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

16 (Pause in the proceedings.)

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

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

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

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

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

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

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

(End of proceedings.)

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



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

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



Tia B. Reidt, RPR, CCR #2798

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

Following are a few comments about this draft.

1. In line 5, "The commissioner may direct you in writing" is unclear given current messaging practices and the term "automated scheduling." Would it actually be an online message to the claimant or an email? That would create problems for some claimants without computer access or without computer skills. Or does it mean you will get a notice in the mail? If so, it might be better to say that specifically. Given the title of the draft rule, it might also be good to explain what you mean by automated scheduling.
2. Line 13, "In all such cases, your ability to or availability for work may be questioned." seems like an unnecessary addition to (1) (d)
 - If you wish to retain that sentence, it has faulty parallelism. I suggest rephrasing the sentence as "In all such cases, your ability to work or your availability for work may be questioned."
3. Line 18 should have a return after the ";or" for the separate line (d)
4. In line 18 (2)(c)5. In line 18 —(2)(c) and (d)— the phrasing is awkward

making it unclear.

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

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

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

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

I suggest rewording if you mean something other than that.

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

Best regards,

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