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

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

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

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

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

Could you please introduce yourselves.

MS. HERNANDEZ: Mariana Hernandez with the policy unit.

MS. BLADES: Erin Blades with the policy unit.

MR. MICHAEL: If you have not already done so, please sign the hearing attendance log. Be sure to provide all information requested and fill in all of the blanks.
The attendance log is kept as a permanent record of this hearing.

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

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

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

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

The goal of the automated scheduling service is to increase the number of claimants who participate in
reemployment services and thereby return to work sooner and thereby claim fewer weeks of unemployment benefits.

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

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

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

The Department has determined that changes to other rules or statutes would not achieve the same regulatory objective. The language of the proposed rule
has been shared with the United States Department of Labor.

There are no other state agencies that deal with the subject matter of this regulation.

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

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

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

We will now hear testimony from those logged in attendance concerning the proposal. Please state your name, spelling your last name, and if you are here on
behalf of a company or organization, who you represent.

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

MS. PAXTON: Thank you.

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

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

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

MR. MICHAEL: Okay.

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

MR. MICHAEL: This is your opportunity --

MS. PAXTON: Okay.

MR. MICHAEL: -- to provide testimony for the record. If you have a written statement you want to submit, we can certainly take that here as well.
MS. PAXTON: Okay. I will also submit that.

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

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

MS. PAXTON: Yeah, okay. Okay.

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

MS. PAXTON: Okay.

Our thought was that, given the title of the draft, it might be appropriate to explain in some -- or have some kind of a -- kind of -- somewhat of a description of what automated scheduling actually means. Does it mean you can only do it on a computer? Our concern might be with people without a computer or lacking skills. We see a
lot of people, for example, fishermen from Alaska that
don't have access to a computer, and many others. So I'm
just -- that's just one suggestion.

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

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

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

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

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

At this time, the rulemaking hearing is scheduled
to last until 9:00 a.m. It is now 8:11 a.m. We will
continue to remain open until 9:00. If no one else comes
to sign in and testify, then we will close the rulemaking
hearing at 9 a.m.

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

(Pause in the proceedings.)

MR. MICHAEL: We are back on the record.

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

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

(Exhibit 1 marked.)

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

(Pause in the proceedings.)

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

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

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

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