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| <b>Location</b>       | Washington State Labor Council   321 16th Avenue South, Seattle  |
| <b>Time</b>           | 10:00 a.m. – 12:00 p.m.  |
| <b>Attendees</b>      | Department Representative: Carla Reyes, Paid Family and Medical Leave Director<br>Paid Family and Medical Leave Act Ombuds: Edsonya Charles<br>Employer’s Interests Representative: Bob Battles<br>Employer’s Interests Representative: Julia Gorton<br>Employer’s Interests Representative: Christine Brewer<br>Employer’s Interests Representative: Samantha Grad<br>Employee’s Interests Representative: Maggie Humphreys<br>Employee’s Interests Representative: Joe Kendo |
| <b>Guests</b>         | PFML Lead Policy Analyst: Jason Barrett<br>PFML Interim Operations Manager: John Mattes<br>Association of Washington Cities: Logan Barr  |
| <b>Members Absent</b> | Employer’s Interests Representative: Tammie Hetrick<br>Employee’s Interests Representative: Marilyn Watkins  |
| <b>Scribe</b>         | Tracy Moore  |

### Welcome and Introductions: Carla Reyes

- Introductions at the table.
- November meeting minutes were reviewed and approved.

### OMBUDS Hiring Update – Edsonya Charles

Edsonya provided an update regarding the recruitment for the opening in her OMBUDS office, Program Specialist 5, Assistant OMBUDS. The recruitment is now closed and Maggie Humphreys and Christine Brewer have volunteered to sit on the interview panel for these interviews; however, Maggie ended up not being able to participate. Advisory Committee members suggested additional persons / groups to participate on the interview panel.

### Policy Discussion – Jason Barrett

Jason introduced Policy’s newest team member, Brittany McVicar. Brittany’s work history includes working for the Nebraska Legislature as well as the Washington State Legislature.

**Elected Officials:** Jason provided context around elected officials and summarized the recent conversations and concerns on the topic.

- Who is included?:
    - ▶ Almost all Washington employers and employees are required to participate in Paid Family and Medical Leave.
    - ▶ Identified the following exceptions:
      - ▶ The federal government and its employees - RCW 50A.04.010(6)(b)
      - ▶ Federally-recognized tribes and their employees - RCW 50A.04.110\*
      - ▶ Self-employed individuals - RCW 50A.04.010(7)(b)(i)\*
- \*These two groups can opt-in.

- Who is considered an employee? Defined as “in employment of an employer.” Jason further extrapolated on this with the following two points, highlighting the “stipend” is a main trigger to the confusion:
  - ▶ **Is the person in employment?** “Employment” means “personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages\*...” [RCW 50A.04.010(7)(a)]
  - ▶ **If yes, is the person in the employment of an employer?** “Employer” means: “...(ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.” [RCW 50A.04.010(6)(a)]

If the answer to both questions is yes, the person is considered an employee.

\*“Wages” does not include payments made to cover costs, such as travel or meal stipends. In other words, if a person shows up and gets paid for being at a meeting, that is a wage, but if they are reimbursed only for expenses they occurred, that is not a wage.

There have been questions whether a paid elected official is considered “employed by an employer,” and whether part time or full-time status makes a difference. The number of hours worked doesn’t matter, any paid elected official is required to participate in PFML. For unpaid elected officials, they are not required to participate since no wages are paid. For the purposes of PFML, the unpaid elected official is not considered in employment.

Jason further clarified the definitions of “employment,” “employer,” and “wage” align with Unemployment Insurance. However elected officials are statutorily exempt from Unemployment Insurance – RCW 50.44.040(10)(a), but this exemption does not exist in PFML law.

Jason then introduced Logan Barr from the Association of Washington Cities (AWC) to shared more on the topic of Elected Officials. Logan shared his role is to represent every city and town in the state. He discussed the unique problems with elected officials:

- City elected officials are almost never considered employees, the relationship is fundamentally different. They receive payment because they are elected not because they provided a service. Their hours are not tracked.
- Adding elected to the PFML count in some cities will trigger a headcount in excess of 50 people, putting additional administrative burden on small cities.

Logan initially shared AWC is interested in one of two options (full exemption or opt-in/elective coverage). The group discussed scenarios for opting-in (by position versus individual). Logan’s key interest at this point is Advisory Committee acknowledgment this is an issue and offered a commitment to further outline some options to bring back to the Advisory Committee. The Advisory Committee members offered the following points / questions:

- Joe: would city opt in for their council? Logan: The individual would be responsible for opting in, just as with pension statutes.

- Christine Brewer: Are you getting opposition/pushback from your members? Yes, Logan shared he do not have formal Policy direction, but part of his role is to project the anticipated impacts of changes such as this. He is part of a work group that also is comprised of school districts and county, however this concern is different for counties.
- The Committee came to a mutual agreement that they are opposed to full exemption.
- Bob Battles: There is a common goal here. There are some legitimate reasons why this is being brought forward. We don't want the full exemptions. We should also consider the non-profits also. If this applies, do we save this for elected officials or for 'stipend positions'.
- Clarifications made:
  - PFML has job protection built into it.
  - Salary and PFML cannot be taken at the same time.
- **ACTION ITEM:** Carla Reyes will follow up with Nick Streuli to clarify whether there is time to add an amendment related to this topic to the technical fix request legislation bill.

## Operations Update – John Mattes, Interim Operations Manager

Carla introduced John Mattes, the PFML Interim Operations Manager. John's previous position was the PFML Contracts Manager. John was heavily involved with the RFPs for our current contractors.

- Calls
  - Calls spiked Mid November after the communications letter was sent out
  - Most calls are regarding immediate needs or benefit questions
  - Nov: over 500 Calls
  - Dec: over 1 thousand
- Other ops updates:
  - Development of FAQs – tracking standardized responses
  - Elective coverage – PFML is working on processes for opting in as well as conditional waivers – what alternative methods will we use for those that aren't able to use our technology. The website is being updated as decisions are made.
  - The goal is to have the first quarter of 2019 to count toward eligibility.
  - Communications team has been in touch with Intuit, Quick books and they rolled out an addition to their platform that includes the PFML requirements.
  - John clarified the only requirement to set up a trust account is for the voluntary plans. John will follow up with the Customer Care Team Staff to ensure they are providing a consistent response.
- Care Team - Currently we have 20+ Care Team Members on the phones. The third cohort is finishing up technical training and will be on the phones and emails after shadowing the current care team (last week of December). John shared the team is really enthused about the PFML program, and even though the call volumes have increased, the staff are engaged and positively committed.
  - Training content is ever evolving.
  - Daily retrospective occurs to ensure the training is relevant to the team.
  - 4<sup>th</sup> cohort is being interviewed this week.

- Voluntary Plans

John summarized the team's process when a Voluntary Plan application is received. While the payment may lag, the team does screen the application for completeness, and will remind the employer about the payment if nothing is received after 5-10 days after the application was submitted.

In response to the concern of the difference between received and approved applications, John shared many of those in pending status involve a lot of back and forth communications between the Customer Care Team staff and the Employer. The team is working closely with the employers to move the application to approval, while ensuring they are in compliance. Most of those pending are waiting for the employer's response.

John shared four plans have been denied. Of those, most are due to no response after ESD requested revisions. They are provided 10 days to correct their application. In the case of these four, they either did not respond or chose not to make the changes. A few employers have withdrawn their voluntary plan applications because after research, they've come to the conclusion that a voluntary plan isn't what's best for their company.

- Best practices for the Voluntary Plan Applications:
  - Read the guide to prepare
  - Identify the gaps in existing policy from the PFML Program requirements- the best plans have studied the requirements and made the adjustment to their application and plan prior to submittal
  - Stipulate the leave entitlement specific to PFML - generally it is easier to follow the Employer's application when they have separated out the leave, rather than lumped as one single item.
  - Provide sufficient details for determination review
  - Ensure definitions match those required under the law – for example, “family members” doesn't line up with the requirements, and additional time is spent going back and forth to clarify the coverage

## **Technology Update – Carla Reyes**

Carla shared the project is on track, per the earlier updates. Affectionately referred to as the 'march to March.' We will to a more detailed Technology update in January. The payment system is part of the technology build, it is on track, AND the timelines are tight.

## **For the Good of the Order**

- Carla shared the program has felt the impact from the communications, noting emails and letters to employers (600,000 emails). Additional efforts to engage independent contractors and self-employed is continuing. The Marketing campaign has yielded 2.3 million impressions, almost 8,000 online webinar registrations, 24,000 downloads of the employer toolkit.

NOTE: The webinars are NOT recorded but there is a recorded version posted on the website. The recent webinars have not been full.

The official ESD letter was circulated to the Advisory Committee 12/5 in advance of the distribution and copied below.



Dear employer,

Washington's Paid Family and Medical Leave program is a new mandatory insurance program administered by the Employment Security Department. The program will give eligible employees in Washington access to up to 12 weeks of paid leave if they need time off to recover from a serious illness or injury, bond with a new child, or care for an aging parent or ill or injured family member. They may receive up to 16 weeks if they have events covered under both family and medical leave in the same qualifying period.

**It's time for businesses to get ready:**

**Premium collection begins Jan. 1, 2019, and benefits become available Jan. 1, 2020.**

**As an employer, what do I need to do?**

Starting Jan. 1, employers of all sizes must:

- Withhold employee premiums or decide to cover them yourself – see calculation right. A premium calculator is available online at [www.paidleave.wa.gov/premium-calculator](http://www.paidleave.wa.gov/premium-calculator).
- Budget for your portion of the premium, if any.
- Prepare to report all employees' wages paid, hours worked, SSN or ITIN and full name. You will need to report the total of all premiums withheld throughout the quarter for all your employees combined.
- First reports and premium payments are due to ESD no later than April 30, 2019. You will use your existing SAW account or create a new one. See below for more.

**Premium calculation**

**Step one:**

Calculate the total premium amount for each of your employees. The premium for 2019 is 0.4%, so:  
 $Gross\ wages \times .004 = Total\ Premium$

**Step two:**

Calculate the employee and employer shares. Under the law, employers may split the cost of the program with employees by withholding up to 63.33% of the premium from their paychecks.

$Total\ premium \times .6333 = Maximum\ Employee\ Share$   
 $Total\ premium \times .3667 = Minimum\ Employer\ Share$

**Recommended actions to take prior to Jan. 1, 2019:**

- Watch the employer webinar on our website at [www.paidleave.wa.gov/employers](http://www.paidleave.wa.gov/employers).
- Download our Employer Toolkit at [www.paidleave.wa.gov/employers](http://www.paidleave.wa.gov/employers).
- Estimate your business size (based on an average headcount, not FTEs).
- Decide if a voluntary plan is right for your business and, if so, apply (must be approved prior to Jan. 1, 2019 to be excluded from first quarter withholding). More information on voluntary plans is available on our website at [www.paidleave.wa.gov/voluntary-plans](http://www.paidleave.wa.gov/voluntary-plans).

**How does this affect small businesses?** Businesses that average under 50 employees do not have to pay the employer portion of the premium but must still withhold the employee portion each paycheck, or cover the premium on their employees' behalf, and follow all reporting requirements. Small business cash grants are available for those that opt to pay the employer portion of the premium.

**Can I file Paid Family and Medical Leave with Unemployment Insurance?** Paid Family and Medical Leave and Unemployment Insurance are two separate programs and will be two separate reports to the Employment Security Department. The process for premium remittance and reporting for Paid Family and Medical Leave will be similar to UI and will occur on a quarterly basis. You will login using your existing SAW account, or you will need to create one.

**What if I'm a sole-proprietor or independent contractor?** Sole-proprietors, independent contractors and self-employed individuals are exempt from Paid Family and Medical Leave but may opt-in to receive coverage. You will only pay the employee portion of the premium. For more information, go to [www.paidleave.wa.gov/elective-coverage](http://www.paidleave.wa.gov/elective-coverage).

ESD is continuously developing rules, operations and technology for this new program and we are committed to giving you the best information as soon as it is available. We encourage you to subscribe to our e-newsletter or go to [www.paidleave.wa.gov](http://www.paidleave.wa.gov) for more information.

Sincerely,

The Paid Family and Medical Leave Team

[www.paidleave.wa.gov](http://www.paidleave.wa.gov) | [paidleave@esd.wa.gov](mailto:paidleave@esd.wa.gov) | 833-717-2273

Open Comment:

No Comments due to technology issues. ---