BE IT REMEMBERED, that a rules meeting was held on the date and location as set forth above. The Employment Security Department was represented by Art Wang, Special Assistant for Unemployment Insurance Taxes, and Lisa Marsh, Neal Gorrell, Steve Hodes, Christopher Smith, Elena Perez, Mary Tennyson, Pamela Ames, Amy Leneker.
Public Meeting on Unemployment Tax Rules, 6/26/07

INDEX

June 26, 2007 - Olympia

Professional Employer Organizations

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome and Introductions</td>
<td>3</td>
</tr>
<tr>
<td>Background and Rulemaking Process</td>
<td>6</td>
</tr>
<tr>
<td>Public Comments on PEO Issues</td>
<td>11</td>
</tr>
<tr>
<td>Summary of What's Next</td>
<td>71</td>
</tr>
</tbody>
</table>

2007 Unemployment Tax Law Changes & General Rules Revision

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome and Introductions</td>
<td>73</td>
</tr>
<tr>
<td>Background and Rulemaking Process</td>
<td>75</td>
</tr>
<tr>
<td>Public Comments on General Tax Issues</td>
<td>79</td>
</tr>
<tr>
<td>Public Comments on Business Transfer Issues</td>
<td>105</td>
</tr>
</tbody>
</table>

Excel Court Reporting (253) 536-5824
MR. WANG: I want to welcome you to the first public meeting we're doing on tax rules this year. My name is Art Wang. I'm special assistant for unemployment insurance taxes with the Employment Security Department and I'll be serving as the facilitator today to receive public comments and so forth. I will also be doing a lot of the substantive work on tax rules over the next several months but will not be the ultimate decision-maker on these things.

As you probably know, the 2007 Legislature passed a lot of different bills -- quite a few different bills dealing with Employment Security issues including unemployment taxes. And so we ended up publishing five what are called CR101's. And the CR101's are -- actually, there's a copy of them in the back there on the second table. Those outlined the different topics that we are considering rulemaking under. The ones we're dealing with today are PEO's; secondly, the other legislation of general tax issues; and thirdly, the transfer of business
We did transfer of business issues before. We had a couple of meetings on that late last year, but we wanted to give people additional opportunity for input on that.

There will be separate public meetings dealing with claimant fraud and overpayment on July 10th and then a self-employment one which has not been scheduled yet.

There are a number of handouts in the back. You should have copies of the agenda. And I know people have signed in here on the sign-in sheet. There are also copies of the various 2007 laws, the five bills. And there are three outlines of issues that I prepared that are back there also.

What I would like to do is just go around, first of all, just to have you state your name and spell your name because we have a court reporter here, Cheryl Smith. So it would be helpful to her if we just do -- you'll probably have to do it again when you come up to speak, but at least if we could go around the room right now and just kind of introduce yourself. Just state your name, spell your name and what company or why you're here, in what capacity you are here.

So let me start over here with you.

MR. SAVAGE: I'm Barry Savage. And I work with Resource Management Inc. My name is spelled B-A-R-R-Y,
S-A-V-A-G-E. And we are a PEO on Mercer Island.

MR. WANG: Great. I guess if your name is Barry Savage, you probably don't need to spell it. But thank you.

MS. McHENRY: My name is Andrea McHenry. I am with Administaff. We are based in Kingwood, Texas. The last name is McHenry, M-C-H-E-N-R-Y.

MR. SORENSEN: My name is Mel Sorenson. I am an attorney from Seattle with Carney, Badley, Spellman. I am here on behalf of ADP Total Source, a PEO that does business in a number of states.

MR. HEATON: I'm John Heaton, spelled H-E-A-T-O-N. I'm the president of Pay Plus Benefits Incorporated, a Washington based PEO headquartered in Kennewick. And I'm here today because I have a keen interest in operational reality.


MR. COHN: My name is Todd Cohn, C-O-H-N. And I'm with the National Association of Professional Employer Organizations. We're a national trade group representing PEO's around the country and today here in Washington State.

MR. GONZALEZ: My name is Ray Gonzalez,
MR. HALSTROM: I'm Jim Halstrom, H-A-L-S-T-R-O-M.

And I'm here on behalf of NAPEO.

MR. MARSH: Good morning. My name is Lisa Marsh.

And I'm the director of the UI tax and wage operations here at the Employment Security Department.

MR. GORRELL: I'm Neal Gorrell, G-O-R-R-E-L-L, deputy assistant commissioner for UI policy.

MR. HODES: Steve Hodes, Employment Security policy.

H-O-D-E-S.

MR. SMITH: Christopher Smith, unemployment insurance policy.

H-O-D-E-S.

MS. PEREZ: Elena Perez, unemployment insurance tax and wage operations.

M-S. TENNYSN: Mary Tennyson, senior assistant attorney general advisor to UI taxes. T-E-N-Y-S-O-N.


A-M-E-S.

Background and Rulemaking Process

MR. WANG: Thank you. Before we get started here with taking your comments, let me talk a little bit about the process. What we've tried to do as an agency is to outline concepts and issues first and not provide drafts.
I've not drafted anything in terms of rules at this point on most of these topics. I have done some checking with stakeholders. And generally, the preference has been that they wanted to provide comments first rather than us providing a draft and looking like we were undecided on different issues. So we tried to approach it that way.

So the purpose of this meeting is to receive your comments. This is the first step in the process by having a public meeting. I realize that most of you have not had time to prepare responses to that long list of issues that I sent out. I will certainly be looking for your input over the next several weeks prior to the second public meeting which will probably be around the end of August/early September. At that point we hope to have draft rules available to you. So I would appreciate your comments, though, as soon as possible, ideally by July 13th for any written comments or things that you want to provide us.

If you want to be included for the notice on the second public meeting at the end of August/early September, of course, sign in. You've already done that. You might also want to -- particularly for the PEO's, there is information about joining the listserv and we can provide information to you that way also. That's contained in the materials in that whole long outline of
issues.

After we provide the first stage of draft rules in late August/early September, the next step would be in mid-September we hope to file a CR102 which is the second stage of rulemaking. By that point we would have the rules in final format, and to the extent needed, we would do a preliminary cost benefit analysis and a small business economic impact statement to the extent necessary.

By the end of October then we would do a formal public hearing on the final rules. As a practical matter, it's relatively hard to change rules significantly at that point, so the emphasis would really be on the second public meeting in terms of getting your input on draft rules and things.

Around November 1st we would anticipate some sort of emergency rules on client rates dealing with PEO's would be published and effective. We need to do something around that time period because of the timing required to calculate overall rates for 2008.

In late November we would file a CR103 announcing the adoption of the final rules. And the plan is generally to have rules effective January 1st.

So that's kind of an outline of the time schedule here.
Public Meeting on Unemployment Tax Rules, 6/26/07

I realize that there will be questions on some of these things, that some of you have questions. The purpose of today's meeting is not to try to answer your questions at this point but to receive your questions and to receive your input. I can try to help clarify issues, but we're not going to try to decide them today.

We've kind of organized this meeting by topic areas. So this 9:00 this morning was intended to be PEO's and then there are different sessions this afternoon for the general tax areas and for business transfers. And we prefer to address things separately to the extent possible, but we will accommodate people if you wish to speak to other issues. If you need to address other topics rather than staying around all day, I can understand that. So we will try to accommodate you on that.

When you do come up to speak, please identify yourself and, again, give your name, spell it if necessary. Certainly, general comments are okay, whatever you want to say about the subject is appropriate. But if you are going to refer to specific issues, it might be helpful just to use reference numbers. And that's why I put those kinds of numbers on in terms of just to make it easier to refer to it by number.

Just a couple more things here. One is that we are
Public Meeting on Unemployment Tax Rules, 6/26/07

1 trying to achieve kind of a balanced result of rules that
2 meet all those good things, that they're comprehensive on
3 the one hand, that they're clear, concise, predictable,
4 consistent, transparent, easy for compliance and easy to
5 administer, relatively simple and easy to maintain. And
6 some of those things are all contradictory and hard to do.
7 But we'll try to balance those things out as much as
8 possible in the ultimate result.
9
10 A couple general themes are should the rules be a
11 bare minimum? Do you prefer rules that should be at a
12 bare minimum or under the theory that less is better? Or
13 would you prefer rules that are more comprehensive and
14 transparent so that we tell you what we're doing and how
15 we're doing it and go into -- which requires more detail
16 and provides more information in terms of how we will be
17 doing this?
18
19 Another general theme is should rules allow greater
20 agency discretion which means that we would be more
21 flexible, we'd have more flexibility in how to do things?
22 Or should they emphasize consistency and uniform
23 treatment? Even if that means that they can be rigid and
24 be perceived as more unfair depending on the
25 circumstances. So that's the general theme in terms of
26 just contrasting approaches.
27
28 ///
MR. WANG: Let me to stop at this point and invite people to come up and testify.

Jim, you're raising your hand.

MR. HALSTROM: I think I have a question more on procedure than anything else. As we discussed earlier, many of our people haven't even seen this document until late last night or this morning. And we didn't anticipate quite such a formal process and aren't prepared with remarks, per se. But I think an objective of both of us, the PEO industry and the Department, is to try to understand what the respective needs are and accommodate those needs in the rulemaking. I guess my suggestion is have a roundtable discussion would certainly facilitate that much better than statements from the roster and going through it like that.

MR. WANG: Again, this is more to receive input from the PEO's or from the stakeholders. So that was the intent of it. Certainly, I don't expect to get detailed responses to things. I understand the difficulty of giving detailed responses to the questions.

MR. HALSTROM: And, Art, I wasn't asking for any kind of definitive answers. But there are some instances where they aren't sure what you're striving at or trying to
accomplish. And dialog would facilitate.

MR. WANG: And that's appropriate. I think it would be easier, though, for the record just to have people come forward and sit. And we can have questions, we can open it up in this same manner as we're doing right now, but let's try to be a little bit more systematic about it by having people come up and speak first of all. Would that be appropriate? Or do you have any particular order of people?

MR. COHN: I represent the National Association. I'm happy to make some initial sort of overview statement and maybe it will facilitate some individual remarks on some of the finer points. But I certainly do appreciate the opportunity to speak today and to talk about some of these issues.

I think as Jim mentioned, I think we're a little disappointed that we didn't get this until yesterday. I think there's some very good questions in here that we're still reviewing. I think our overall goal as a membership organization and obviously some of our members sitting here in the room is to get the broadest input that we can from the folks that are actually doing business here and are going to have to comply with the rules. So I think a lot of our comments will probably come to you through writing between now and July 13th to respond to specific
issues that we only received very late last night or early
this morning or for some just as they walked into the room
today.

I think we have two very general and broad concerns
with regard to moving forward on implementation. And
those would really be the two deadlines that are set forth
within the statute.

The first deadline, as you're aware, is September 1
of this year which is very fast approaching, obviously.
And that deadline is for registration of PEO's and their
clients with a litany of information to the State in order
to have transparency which we think is a good thing. We
think transparency with the State is a good thing and are
supportive of that.

We're a little bit concerned, however, that there are
some regulations that need be promulgated, some forms that
need be effectuated for that registration process to
begin. And we recognize at this point it does not seem as
if those regulations, emergency or not, will be in place
before September 1 for the registration component. And
I'm sure that forms can be finalized before then but we're
sort of getting to the point where we need to do that
quite shortly in order for not only the folks here but the
folks that are doing business here in the state to comply
with the statute. I think that's our Number 1 goal is to
not be sideways with what the statute says and requires us
to do. And I think we need to work with you all to make
sure that happens for our folks.

The second deadline, obviously, is January 1 of 2008.
And for us, it's a very important deadline as it is for
you. We need to ensure as the current system is
decoupled, meaning that currently the statute dictates
that the PEO is the employer for purposes of unemployment
insurance and the new statute will move to individual
client experience rates being utilized. We need to make
sure that there is some certainty, both on an operational
standpoint and from a practicality. We need to know what
the rules are. We need to know how we're going to
interact with your agency with the State, with our clients
and prepare ourselves as business entities to transition.
And while I think that the process is good and forthright
in moving towards that, November 1st is, again, sort of
brushing up maybe against the outer reaches of being able
to comply with that deadline. But at the same time, we
would not want that deadline pushed back, meaning
January 1, if the law is going to change which it has to
under the statute, we don't want it pushed back for any
reason beyond January 1 of 2008.

So I think what we're looking for from the
these individual issues here today, but from a broader perspective, we are looking for some guidance, as well, from the Department in helping us as businesses here in the state to comply with what the statute says. We recognize that will be accomplished through rules but we're also very cognizant of the timing not only from the Department's standpoint, but from a business reality standpoint. Things can't happen overnight. I think you all can appreciate that. The regulation becomes effective on August 31st for complaints on September 1. While it technically meets the requirements of the state, operationally, it can't work for the industry.

So I think our first goal is to get to that first deadline, September 1, and advance so we have the rules and the guidance that we need and the forms from the Department so that we can alert from the membership and from individuals what these folks need to do. And then as we get closer to that second probably more important deadline, we need some guidance as well.

I also think, however, the Department might need to think, as well, maybe bumping up some of these deadlines
MR. WANG: I appreciate your comments there.

Unfortunately, the rulemaking process just takes so long that it's hard to speed things up without doing an emergency rule which -- and there are limits on what you can do with emergency rules and things. So that's part of the reality of just the difficulty of the process.

MR. COHN: And maybe, I guess, what we're looking for in terms of guidance from the Department then is what do we do? We understand the statute is what it is and regulations do have this timing issue to it. The statute was very clear in some of the deadlines that were set forth. Some of those deadlines are more onerous than others on the industry from what the status quo is under the statute. I think you can appreciate from our perspective, we can't change overnight. It's impossible. And so we're going to need lead time to do it, we're going to need to know what the definitive rules are in order to do it for these two deadlines.

And our folks, I mean, we're talking about moving a glacier in less than maybe a quarter to change the current system. And I know it's a challenge not only from the Agency end, but it's a challenge from our end too.

MR. WANG: I appreciate your comments on that. I
know that we are working on forms, for example, to use by September 1st. We're trying also to be careful about making sure we give a consistent message. And so we want to get our act in order and to make sure that we are internally consistent before we release stuff to the public and to the PEO's. But we recognize that there are difficulties inherent with your timing needs also.

MR. COHN: I guess my other question on the first deadline of September 1 and the forms that the Department will be putting forth, will there be an opportunity when those forms are released, will they be a draft form which we may have some type of input on or will the form be the form and that's simply it? You know, there'll be an opportunity for us to at least look at it, comment on it and provide you with those comments.

MR. WANG: I'm not prepared to say at this point, but is that something that you would like to do, I take it then, is you would like to see the forms in advance, if possible?

MR. COHN: Yes. I think -- I'm sure you hear this a lot, but oftentimes, I think the best intentions of an agency may be a conflict with the operational reality of how some of the businesses in the state work. And I think it's good for everyone to recognize what is doable, what is not doable and to meet the needs of the State while
1 also serving the needs of the business community. So I 
2 think that would be helpful, if possible. 
3 MR. WANG: Your point is noted here. I can't 
4 promise, but your point is noted. 
5 MR. COHN: I appreciate that. I think what we might 
6 do, if it's okay, I know down the line here we each have 
7 individual questions, issues, comments that we want to 
8 give on different aspects of the statute. Again, because 
9 of the timing and how we received some of this, I don't 
10 think it tracks necessarily with the assumptions, issues, 
11 WAC sections. But I think what we may do if acceptable to 
12 you is maybe sort of do a free-for-all in terms of 
13 articulating some issues. And I think as Jim articulated, 
14 it might move into some free-flow conversation between all 
15 of this and articulate some of our concerns. 
16 MR. WANG: Who would like to speak next? 
17 MR. HEATON: I'll take a little more of a free-form 
18 flow. Because things in operational reality don't always 
19 fit in this neat list. For example, Todd makes a good 
20 point on the forms. This is such a change in the 
21 relationship that I have with my clients that I will not 
22 e-mail this form or fax the form or mail the form to each 
23 client. I need time to sit down with each client 
24 face-to-face and explain exactly what has changed in this 
25 legislation and explain to them what the form is.
One thing that is not addressed here is communication to the client from the Department. So I'm making the request that we have the authorization that whatever is signed and what form it is, that all communication go to that PEO. This is very important because small businesses hire us to provide the services of keeping the paperwork off their back. We need to be able to distinguish exactly what the communications will be to the client and to that PEO because if there's a mission-critical communication that goes to the client and the client doesn't report it to us, we can wind up with problems no one ever wanted to have. So it's important to me that we be authorized to receive all communications. And this is not out of the norm now. Payroll services have this ability. So I just want to make sure that that carries over into our relationship.

Another thing that I don't see covered here at all that is very large in operational reality is not all companies use PEO's for their entire workforce. And I think that this is going to be best handled in a format where we're sitting around the table together trying to work through the operational reality of how our client maintains a single account for themselves, the PEO relationship is only for a part of the workforce. And this is not addressed at all. And this is going to be a
MR. HEATON: One of our clients that uses our PEO service is Cadillac Medical Center in Richland. It's a big hospital. And they use our service specifically for their transcriptionists who are in many states on the East Coast. That's their main motivation. But occasionally, they will have a transcriptionist in the state of Washington. So you have the hospital sending in their quarterly unemployment report. We have always been recognized as the employer under current statute which means we send in the reports for the employees now. I've seen nothing addressed or discussed on this complicated issue.

Those are the three major things that I saw as I read down through here. There's a lot of questions. But many questions are not even on this list that need to be asked.

So that's the end of my comments.

MR. WANG: You've raised some questions here. Are there other questions that you have that should be on this list?

MR. HEATON: Not me personally. I'm sure there are some with the gentleman beside me that are not on here.
MR. WANG: And let me follow up also on your first point there about all communication should be directed to the PEO. There are a couple of limitations. One is in the legislation that says we need to have -- I don't have it in front of me -- but some sort of authorization from the client first.

MR. HEATON: Within that authorization, the client says, "I authorize you to send the communication." I just want to make sure that with the proper authorization, the Department then is comfortable sending the communication to us.

MR. WANG: With the proper authorization.

MR. HEATON: Yes.

MR. WANG: And are you recommending that all -- since if the function of the PEO is in part to get the paperwork off the client's back, as you put it, are you saying that you would prefer that no communication go to the client even if the client may ultimately be responsible for some things?

MR. HEATON: I'm requesting that the client can authorize all communication to come to the PEO. I am asking for that, yes.

MR. THORESEN: I concur with John's comments and I have a few more specifics. One is in response to your initial introduction, I would prefer simple versus a very
detailed type of regulation, something that's simple to implement and not bureaucratic with lots and lots of forms that have to be completed every quarter and with some flexibility, that the Department would have some flexibility for special cases.

Some of the specific things that I have, one of the things that's required in registering our clients is that we are supposed to provide the names and Social Security numbers of corporate officers and owners, limited liability company members. And in some cases, particularly with limited liability company members, we may not actually have some of that information. Because while our PEO handles all their employees, the members of the LLC may pay some employment taxes and we wouldn't necessarily have that data.

Another requirement in there is that we provide the client's Employment Security Department number. And we have a number of long-time clients and I don't even think they have Employment Security Department numbers anymore. So there are some things that would be difficult to either get or that we wouldn't have available.

MR. WANG: Let me interrupt you if I may and just ask a question about the business side of things there. If the client is required to have some of these things, would you be the one -- how does the business model normally
work? Would you be the one doing that? Because if the client is going to be required to ultimately have an Employment Security number or to provide that information of LLC's member numbers and things, would you want us to be contacting the client directly or would you want to be getting it from the client to provide to us, assuming that if those things are going to be required?

MR. THORESEN: If the client company has filed a master business application with the State of Washington to obtain their UBI number, they've probably already provided this information. And wherever that master business app goes, it seems to me the State already has it. So if we provided you with a client name, who the current officers are, what their UBI number is, it just seems to me like that information is available from whether it's the Department of Licensing, I guess it is, that already has that information.

MR. WANG: One of the complications from our end is that the UBI request may not have indicated a request for the Employment Security unemployment part of it.

MR. THORESEN: I think with new clients that come on after September, it will be easy for us to get their Employment Security Department number. But I have clients that I've had for ten years. And their accounts have effectively been closed. And they don't know what those
numbers are and I don't know what they are either. So if
the Department has maintained -- has them after we send in
the names, then that's -- you know, you probably have the
information -- more information than I do in that case.
What I'm saying is in registering, there may be some
missing information that we just don't have.

MR. COHN: I think, Art, as we go through this, I
think the message we're trying to send here is it's a
little messy to decouple the existing system. It just is.
It is what it is.

And I think from a holistic perspective, we feel we
are a very viable industry here in the state and we would
provide an extremely valuable service. And the fact that
the statute changed, we don't want to upset the apple cart
in terms of what the industry is doing. Clearly, the law
has changed and both ourselves and our clients need to be
compliant with the law. But at the same time, a lot of
disruption for anyone could disrupt their wants and desire
to continue with the PEO just because there's this
disruption in the pipeline. And I think as we move
forward with new clients entering in the PEO relationship,
it gets a lot easier because there are rules and this is
the way it is going forward. As we decouple the existing
system, we're trying to be as sensitive to the State's
needs as we are to our client's needs as well.
Public Meeting on Unemployment Tax Rules, 6/26/07

1 I think that's what some of the sentiments here are
2 that some of these folks have had clients for 10, 12 years
3 and there have never been issues and then suddenly a whole
4 new statutory change has happened. And potentially,
5 because of nothing they've done wrong, it can cause some
6 confusion and concern with them and potentially hurt these
7 businesses where we're doing nothing wrong, either.
8 
9 MR. HEATON: And this is why I will meet with each
10 client face-to-face. And so it's going to take a lot of
11 time for me because of this massive change. And I just
12 ask that -- I just want you to know that I know you can't
13 fix that.
14 
15 MR. WANG: But your point is that you need time in
16 order to be able to do that.
17 
18 MR. COHN: I think we need the flexibility too. I
19 think for -- as I said, as we decouple the system, I think
20 we need to be -- hopefully, the State will be sensitive to
21 some of the things that we need to do with our existing
22 clients to ensure their comfort level too with staying in
23 the PEO relationship. Because I know at the end of the
24 day, the statute -- or at least I hope the intent of the
25 statute was not to destroy the industry, it was to tackle
26 some concerns which the Department and others may have had
27 to better run the system. And I would hate to see because
of those changes any disruption or dying, if you will, of
the industry here in Washington as a result.
So I think what we're looking for, at least from the
Agency's perspective, is some recognition of the fact that
it is difficult for us and also trying to maintain our
current client base, as well. These guys are thriving
businesses here in the state of Washington. We hate to
see that hurt by changing the statute like this.
MR. THORESEN: So continuing on, a few other items.
One of the provisions talks about either a power of
attorney or confidential information authorization or some
other form. It seems to me that since the legislation
does make the client ultimately liable for the payment,
there's really no need for a power of attorney form, just
some other Department form it seems to me would make
sense.
We would like to be able to file a single electronic
report with one check, not have to do individual paper
reports and/or individual checks for the quarterly
payments. And what we don't know yet is whether that
system is available currently with Employment Security,
and if it's not, how long it would take to be in effect.
Coupling with one of Todd's comments, we'll start
processing client's 2008 payrolls in late December. And
we need those rates sometime preferably in early December
in order to load up the system with all these different
rates for each client. So just another comment on the
timing.

On the section dealing with how to handle existing
clients since they don't currently have their own
experience rating, it seems to me that whatever the new
employer rate for their industry may be the fairest option
in that situation.

The section dealing with payments, if there's a late
payment or payments not made or the Department starts
going after somebody, in a ten-day period can go after the
client, it seems like a relatively short period after the
end of the quarter. We would like the regulations drafted
such that their first contact on any issue relating to the
payment of the report would have to be with the PEO.

Because there oftentimes could be just little
administrative issues. And if something went out to the
client prior to the Agency really understanding what the
problem was, it could just cause client relation issues
with the PEO's.

MR. WANG: Understandable.

MR. COHN: Just on that one point there, I think this
might be sort of a general observation about some of the
questions that were posed in the six pages we got late
yesterday. I think in general, what we would like to see
I recognize the statute does have a ten-day requirement and the ten days, you can't change it. It's in the statute. But I think what we would like to see in the regulations is some recognition that if there is some discrepancy, that as Drew mentioned, the first contact is with the PEO to try to resolve it. And if, in fact, a good-faith effort, however that may be defined through statute, is made, that the ten days be held in abeyance until such time that the Department recognizes or feels a good-faith effort is not being put forth to remedy the issue in a timely fashion. I think as an agency, you can appreciate sometimes there are human error mistakes both on the end of the Agency or on the end of the business in the state. And we would hate for human error that no one catches for, say, 11 days or 12 days to erode the relationship that these gentlemen have been building over a decade with their clients in providing a valuable service for them in the state.

Clearly, on the other end of that, if a good-faith effort has been made by the Department to reach out to a PEO and the PEO ignores them or refuses to work with them, then we recognize that the ten-day requirement probably
should move forward.

MR. WANG: Let me go back to a couple points that
Drew mentioned earlier. One is the filing of a single
electronic report for the quarterly payments. And you
asked what the status was. You currently can file a
single electronic report. The one check, we don't have a
means for doing it with one check at this point for a
multiple client report. We are in the process of working
on that, but it is not available yet.

MR. THORESEN: Payroll services don't do that?

MR. WANG: Let me try and remember some of the
details here. Actually, I'm not going to go into it
because I don't want to misstate things. But the point
is, one of the concerns from our end is simply if we -- we
need a means for if you're going to be paying with one
check, we need a means to verify the accuracy of that one
check or else we anticipate what happens then if there's a
problem. If your one check is not -- if you're paying
with one check for ten clients and the check is wrong, how
do we tell which client gets the problem? Or who gets the
problem?

MR. THORESEN: That, Art, is exactly why, in reading
what Todd just said, we would like you to contact the PEO
first. Because if somebody transposed a number on a
check, that's a simple fix that you just write another
check to make up the difference. Or if there's an
overage, you have to handle that somehow. But we do that
currently with the Department of Labor. We write one
check for all of our clients. So if there's an issue, we
are contacted first to figure out what the problem is.

When we were going through this legislative process
before the bill was passed, we were pretty well assured by
the director that it would be a relatively simple change
to the system so we could file just identifying the
client, subtotalling by that client, and then I think the
check part is more just an administrative thing.

MR. COHN: Something just from an in-house
perspective. You might want to follow up with Joel Sacks.
He was the gentleman within the Agency when we were
speaking about this. I recognized two different
processes: One's a legislative and one's a regulatory.
But from an Agency perspective, he lead us to believe as
we talked about operational reality about how this would
work, that it is a fix that could be accomplished within
the Agency.

MR. WANG: It is a fix that we are currently actively
working on. The electronic systems are never as simple as
we would like them to be, but we are currently working on
that.

MS. MARSH: One thing that I would like for you all
Public Meeting on Unemployment Tax Rules, 6/26/07

to address here so that we'll consider it later is, when we get to a point where one payment is allowed, if that one payment is not sufficient, what would the industry preference be so that we can consider it in our rulemaking? Should proportionately all of the accounts for that one payment be reduced by the insufficient amount, say if it was a transposition of numbers? Currently if any individual employer pays less than their taxes due, then they'll get penalties and interest. Should the penalties and interest be attached to each one of your client employer accounts or to one? And which one and how would you like us to make that decision just so we can consider your input? So if someone would talk to that today, it would be helpful.

MR. THORESEN: Just off the top of my head, one of the reports would be the PEO's report. I would suggest that any overages or underages get applied to that report and the client's reports would then all be processed just like they were filed. And the PEO can address those issues with our own account.

MR. HEATON: And I would agree with that.

MS. MARSH: And the second piece is if the PEO doesn't have their own account, they have no employees in Washington, please address how you would prefer that our rulemaking adopt that as well.
MR. COHN: I would certainly say that it's a valid question, probably one that we're not necessarily prepared to answer today. But it's something that we'll take back and discuss internally and get an answer through written comments.

But I think at the end of the day, and I've heard John, myself and others saying "operational reality" many times and you'll probably hear us say that many more times. The idea of clients joining a PEO relationship and PEO's doing all this work as well, there's efficiency in doing that. Some of that efficiency erodes when John or Drew or others start having to write 100 or 200 different checks every quarter to go along with their client's -- I mean, John has to pay someone to do that. And some of the efficiency here, John, you might speak to that.

MR. HEATON: Because you would also have the challenge we're submitting this report as one electronic report and we send in 200 checks, how will you identify each check with the subtotal by account? So I really would like to find a solution for one check.

MR. THORESEN: One other issue, and I think John had brought it up with the Catholic Hospital case and we have a similar case with a couple of other clients, the parent company is out of state. In this particular case they are using PEO services for, in this case, they're insurance.
agents. And for liability reasons they don't want those particular employees to appear on their unemployment report. So somehow we're going to have to come up with a mechanism for that situation where those employees don't have to be reported on their parent company's unemployment. They're not in their payroll system. They don't even know who they are. They've never met them. They're not signed up as an employee of that client. So somehow we need to be able to address that.

MR. WANG: You raised the issue of how you handle the rates for existing clients and you were saying they should be at the new client rate. Could you speak a little bit more to when -- elaborate on that for me. What year are we talking about? 2007? 2008? For 2009? And also, what extent are you talking? What happens to the new client rate, for example, if you hire them?

MR. THORESEN: Well, that's just one suggestion. And it particularly applies to our older clients that we've been reporting for ten years or more or five years or more where their account with Employment Security has effectively been closed, they don't have any experience, the Department doesn't -- because they see them all under currently under my tax ID number, they don't have any experience on them. So in order to be fair, I'm just trying to come up with a fair method to that client.
Should they get the new employer rate for their industry?

That, to me, is one way of resolving that particular problem.

A client that I had that maybe came on last year, we probably can find their Employment Security Department number fairly easily. But I honestly don't know for particularly these older clients what happens to those numbers inside the Department. So somehow they need to be treated fairly if they're going to start under their own experience rating.

MR. WANG: Would it make sense to pursue trying to track down the individual Social Security numbers of their employees and pursue that?

MR. THORESEN: How far back would you go? That would be a monumental task.

MR. WANG: Well, depending on the circumstances, it could be --

MR. THORESEN: If a new company filled out a master business app today and you give them a new one, isn't that just a -- I'm just trying in keeping with your thing about being simple, it just seems to me that that's a very simple way to assign them a starting rate.

Another option would be, I guess, the PEO rate. That's their starting rate. The thing with that, though, the PEO rate that we currently have is just a composite of
all our clients' rates. So maybe a fairer thing would be
to give them the industry rate. I'm not sure.

But to go back and try to recreate something with
five years of records for an employer who has had
turnover, that would be a real burden.

MR. HEATON: I would suggest, you know, I'd go back.

There are other complications. It's not uncommon for an
employee working at one client to terminate and go to work
at the employment of another client. It would be simple
to use either one or two of Drew's suggestions would be
new industry -- or new company rates for the industry for
whatever would have been assigned to the PEO, would be
assigned to those clients on the date that you determined
we register our clients.

MR. COHN: I'm sorry. I missed the first part of
that conversation.

One of the concerns I would have in trying to
recreate a client experience prior to January 1 of 2008 is
that it takes a revisionist's look at what the statute has
been. The statute has dictated that the PEO is the
employer for purposes of unemployment insurance. And
until January 1, 2008, we still are. So for the
Department to try and go back five years and create
something that heretofore has been statutorily defined as
the PEO I think would be -- I think personally would not
be the intent of what the statute holds. I could be very wrong there but I think there are ways to do it which are easier. I think probably the simplest way to do it would be the existing clients of the PEO on January 1, 2008, would start off with the rate of that PEO and everyone would then just have individual accounts with that rate moving forward.

Another way to do it potentially that's a little less easy but I think fair is to take one of two rates, a choice between either the PEO's rate or a new business rate for that client, whichever serves the client better. Another way could be to take the PEO rate or the industry average for whatever industry that client is in and take the lower rate for the client. But I think there are ways to do it which are simpler which do not take a revisionist's look at what the statute has historically been here in the state up until January 1 of 2008.

MR. WANG: Let me just explore that a little bit more if I may. Suppose if part of the statute says we are to use the individual client's experience, basically, as soon as it becomes applicable -- if the PEO has been reporting, whether it's lumped under the PEO or not, but if you got the experience by Social Security number for individual employees reported by the PEO, why can't we simply look at -- so if you tell us which employee goes with which
client, wouldn't that be relatively easy just to be able
to determine and assign the experience since we got it for
the PEO, just to assign that to the client?

MR. COHN: I think one of the -- you mean by going
back and looking at Social Security numbers over a finite
period of time, whether it's three or five years?

MR. WANG: Yes.

MR. COHN: I think part of what you're losing out
there is the value that the PEO has over time brought to
that client and I think it's the value that the State of
Washington is going to lose. We're not going to argue the
public policy here today, but what a PEO has done during
the relationship is to effectively manage the UI claims
and to ensure that the payments are accurately calculated
and received, etc.

MR. HEATON: I don't think with the short time that
we have left that you really want that burden. Because
you are going to need reports from us for -- if you want
three years, we're going to have to go back and print out
reports for all of our clients for three individual years
or potentially even by quarter. There's a lot of other
pressing issues on the table that we need to address that
I think this would just stop the whole show. This is a
huge job.

Plus, we need those rates, as Drew said, by the end
1 of December because we're starting to process payroll and
2 we need to be collecting those funds. So I would strongly
3 suggest you find an alternative without looking back.
4 It's a huge job.
5
6 MR. THORESEN: Art, I think it's not just going back
7 and looking at Social Security numbers of the people that
8 are collecting unemployment. You need to know the total
9 wage of the client for that reporting period -- for the
10 Employment Security reporting period. You need to
11 calculate when they reach their maximum wage because their
12 rate is based on not just the people that are collecting,
13 it's what they reported into the system.
14
15 MR. HEATON: And you have the challenge of companies
16 that may have gone out of business two years ago.
17
18 MR. THORESEN: So it seems like it's either between
19 the new employer rate, the PEO's existing rate. There's a
20 couple of simple methods of assigning those client rates.
21
22 MR. WANG: Would it make any difference to treat them
23 differently for 2008 and 2009? For example, if we were to
24 go with using one of the simpler methods for 2008 but try
25 to incorporate more experience in 2009, would that be
26 practical?
27
28 MR. THORESEN: Why can't they just start to develop
29 their own --
30
31 MR. HEATON: Well, they would.
MR. THORESEN: Right. Why would we do something different in 2009?

MR. COHN: To what end? I think what we're trying to do here is take the current system and transition it into what the statute has dictated that the Department and the industry do. And we're moving from what we've historically done into something new.

And it seems like the cleanest way is to take the experience rate of the PEO or one of the other methods that we talked about and to move forward. So those clients who have been in a PEO relationship have a starting rate and they start to track their own experience on January 1 of '08 as the statute dictates.

MR. THORESEN: And that would be just like a new business that started on January 1st. They're in the same boat as that new business that just started that was not with a PEO so that they were starting to develop their own experience rates.

MR. COHN: And for all intents and purposes, I think that's what the statute is saying. It's saying that we're now changing the way this is viewed. Up until December 31st it is, in fact, the PEO who is the employer. If there's a client in a PEO relationship on January 1 of 2008, there's a new paradigm. And the paradigm has now changed. But I think, obviously, there's rules that need
to be come up with how you make that switch. I would
think that utilizing a very simplistic what has been the
status quo and then transitioning into the new way of
thinking might be the best way to approach it.

MR. SAVAGE: A couple of comments concerning this
corveration. Our company went through a predecessory
transfer audit with the State here in the last 15 months
or so. It went back through two years of every Social
Security number, every employee, every payment. And it
took the Department six months to complete that audit. At
the end of that time, we were found to be well in
compliance. In fact, we got a check back from the State
because we had overpaid based on your predecessory
transfer equations as to how to come up with the new
rates. So we're ready to go in that direction if that's
what this State elected to do. But obviously, it's a
harder thing for everybody to try to comply with.

The second thing is is that most of our clients enter
into this PEO relationship because we manage portions of
their business much more effectively than they can on
their own, state unemployment taxation being one of those
things. So I have a little bit of an issue saying that if
you want to go with the new business rate, I actually
think that as a group, we manage our clients better than
that. And if you were to look at some kind of a blend
between either the existing PEO rate and the new business
rate, I mean, it's going to be tough. There's going to be
winners and losers on either side of the fence for that,
depending on what industry it is.

But going back through and matching them all up,
that's a tough thing to do. That's the way we report to
you guys currently. You've got all those records.

MR. WANG: How hard would it be -- I just want to go
back to one question to one thing that I think John
suggested that employees also who jump back and forth
between -- so that we wouldn't be able to tell just by
looking at the employee's history that you'd have to
figure out how that person jumps back and forth between
clients.

MR. HEATON: Well, it's not jump back-and-forth.
They just terminated at one client company, a normal
termination, and they're hired at another client company.

So it's not jumping back-and-forth, but you would have a
transition sometimes.

MR. WANG: How often does that occur?

MR. HEATON: It's not every day.

MR. SAVAGE: Depending on what your book of business
is, if you have a large book of business in one industry,
I do see that. I see that a lot in some of my industries.
One guy will leave one company and go to work for another.
They're good employees and if they elect to leave, they go someplace else. So you will find some of that. I don't know how much there really will be, but if you have a book of business that incorporates one large industry, you'll see that for sure. And there's a lot of small businesses within that large industry.

MR. THORESEN: Art, you seem to be really after getting history and trying to recreate an experience. And I guess I would like to have some understanding of what is the purpose of that, especially in light of the fact that we are considered the employer. Under current statute we are the employer until December 31st. There's just no basis for it. So I would like to kind of understand why that is relevant to the Department to have that information.

MR. HALSTROM: That's exactly where I was going to go, Art. Because I think as a matter of law up until the implementation of this legislation, they are employees of the PEO. And I don't think you can attribute the experience rating of one company to another.

MR. WANG: I appreciate the comments. I'm just trying to explore different areas here.

MR. HALSTROM: I'm not unsympathetic to what you're looking at. Just in going through it, I realize that's the employer right there until the effective date.
MR. THORESEN: Just asking the Department to look at why would we want this information, what would the purpose be when there are two or three simple methods that have been brought up about how to handle the changeover.

MR. WANG: How do you deal with the winners-and-losers issue, though? Because you mentioned that there -- or Barry mentioned that there would be winners and losers there, whichever system you go with whether it is a new PEO, whether it's the PEO rate or whether it's the new business rate.

MR. THORESEN: Well, there's a change in the law. That's the answer. We have to tell our clients there was a change in the law, there is a new law January 1, 2008, here is the fallout to you from that law. And some will benefit. If you use the new employer rate, I believe most of them will probably go up but some will benefit and some will get an increase.

MR. COHN: Art, maybe the easiest way to level the playing field of winners and losers is to simply take everyone that's in the PEO relationship currently which currently has the same experience rate, and as the system changes over, everyone keeps that rate only in separate accounts. There's no perceived winners and losers. Everyone starts at the same level they would have been at if the law didn't change but they go on their own separate
courses now that the law stipulates that they track their own experience, it's not lumped in as one number.

MR. WANG: What happens if we do that and over time should we differentiate between the client employers who decide to -- if their rate would be lower than the PEO rate, that they may choose to file separately or just treat themselves as a new business and file for that purpose?

MR. COHN: If they're also in a PEO relationship?

MR. WANG: Yes.

MR. COHN: I don't believe the statute allows them to do that. I believe the statute says that the PEO must report on behalf of their clients.

MR. WANG: So you would approach it that they cannot do things separately and just file separately in order to get a lower rate?

MR. COHN: I don't think the statute permits them to do that. But I think what's going to happen, and correct me if you see it differently, but as of January 1, they're going to have their own unique ESD number. And that is theirs now forever whether they're in a PEO relationship or not. So even if they left the PEO relationship and they couldn't shed that experience rate that they had for that number because it is -- it will uniquely be their identifier, it will not be tied anymore to the PEO. So
Public Meeting on Unemployment Tax Rules, 6/26/07

there'll be no opportunity for them to try to gain in the
system either. It is what it is just like every other
employer in the state.

MR. HEATON: If that's an issue, I think there would
be a separation of a client and a PEO. Because if a
client chose to do that, I would terminate that client.
It would so convolute our record keeping that it would be
impossible to do.

Now, if the client wants it on their own, then they
would terminate and go on their own. So that is a
mechanism I think that's already in place is the ability
to choose who you do business with.

MS. McHENRY: My comments are that I agree with all
the comments that have been stated thus far.

My position is a little unique in that Administaff is
a company that's based in Texas. However, we do business
in Washington State. And so we're basically operating as
an out-of-state company and we do not have a physical
location office in the state of Washington.

I am just curious about the record's section. There
are some questions about whether or not PEO's should have
records for all of their clients in one centralized
location or can these records be located at different
locations? For us, it appears that this is requiring us
to obtain an actual physical location just to house
payroll records for all of our clients in Washington. And
I don't know if this is the intention of the statute or is
it just that ESD would like to be able to audit payroll
records for various clients and not have to fly to Texas
in order to do it. I'm not sure if that's the intent.

We can make our records available at any location
that you designate, but I think it would be onerous for us
to actually physically establish an office here just for
that purpose. So that is a concern for us.

There is also another question about other business
and financial records necessary for an audit. I'm
uncertain about what other business -- I believe that
you're talking about the specific client employer's
business and financial records. Since we are filing under
each individual client account number, then the only
relevant records would be the client's, I assume. So I
think you could easily obtain those from the client. So
it does not appear that any of our records would be
involved in that type of audit or situation, but I would
like more clarification as to what the Department means by
that.

MR. WANG: I think our concern is what happens if we
do need to audit a client and if it's a PEO that is filing
in Washington that's got employees here, but let's assume
it's a client. You're an out-of-state PEO. How do we
access information for that client in state? How do we get information about that client in state? How do we audit?

MS. McHENRY: As a PEO, we do provide our clients routinely with reports concerning the amount of wages that we pay, the amount of premiums that are deducted from the employee's wages, workers' compensation premiums, as well. So we do provide our clients with various reports on a regular basis and we could give our clients that information if requested. I don't think that the burden should be on the PEO to truck in a truck full of records, I guess, to some specific location. I think if you just actually say, "Hey, the client, if necessary, should be able to produce wage data," and whatever, the PEO could adequately provide that.

MR. HEATON: Let's go back to operational reality. There are no records in Texas that the client would not have because all you have is electronic records. The time sheets are not in Texas. The time sheets are in the state of Washington. So if there is an audit, did, in fact, all the wages, were they reported? The evidence of work is here. It's not in Texas.

MS. McHENRY: It's with the client. The client has it. It's not like it's --

MR. THORESEN: This situation occurs in many
Public Meeting on Unemployment Tax Rules, 6/26/07

1 businesses today. I think the Department must have a
2 process today for employers that pay from their home
3 office which is out of state to their employees in
4 Washington. So it's not unique. I would just say we'd be
5 treated like anybody else.

6 I worked for a company that the payroll came out of
7 San Diego. There were no payroll records at all in
8 Washington State offices. So if you were going to audit
9 that particular company which is a nationwide company,
10 you'd do what you do. We should not be treated any
11 differently.

12 MS. McHENRY: My next point is just a general point
13 and I think it's already been made as it goes to the first
14 generalized question that you had initially about whether
15 or not the drafting of the rules should be a bare minimum
16 or they should be more comprehensive. I'm very concerned
17 about the Department's ability to handle simple errors and
18 miscalculations and how that impacts our ability to
19 process payroll for all of our clients. I do not want a
20 simple -- this statement has been made before, but I do
21 not want a simple misapplication of a number to basically
22 cause all of our clients to be classified as delinquent
23 for some reason. I don't think that's a value to any of
24 our clients and I think that would basically upset our
25 ability to service our clients properly. So I don't know
what the answer to that question is. It's kind of like a
rhetorical question. I think it's very important for
whatever rules that come out to be able to allow for
flexibility when things occur outside of what's stated
within the rules and there to be, let's say, an informal
resolution-type process and then to go on to maybe
something formalized. I think it should work on that
level because if you jumped to formal, I think there's
going to be a lot of problems.

MR. HALSTROM: We've talked about the PEO's domiciled
in Washington do have an account that's applicable to
their own company and their own company's operations. And
it doesn't seem to be a problem to ascribe any errors or
deficiencies to that account. I think for the sake of
operational deficiencies, what would preclude you from
establishing an account for Andrea even though they don't
have employees domiciled in Washington for those
administrative purposes of charging back underreporting,
overreporting whatever until it's reconciled?

MS. McHENRY: And we need to register anyway. So the
Department does have some information on our company and
where our offices are, where we're located. So there is
some accountability, if you will. Why else would we need
to register?

MR. COHN: I spoke to Jim about this in the hallway.
Public Meeting on Unemployment Tax Rules, 6/26/07

It would create a system which I don't think is currently here in Washington, meaning since you don't have any Administaff employees here presumably -- we'll just say you don't.

MS. McHENRY: And I'm not totally certain.

MR. COHN: Well, we'll just say you don't. You would not have an Employment Security number for Administaff here because you don't have any payroll, any employees, etc.

MS. McHENRY: But we do.

MR. COHN: You have an Employment Security number?

MS. McHENRY: Yes.

MR. COHN: Under the new system --

MS. McHENRY: Going forward. Let's say that this is a new PEO.

MR. COHN: Under the new system, because you have no employees of Administaff here, you would not have an Employment Security account number, per se. I think what Jim is saying is that the Department could require even with no payroll that a PEO have an account that you don't report anything on. And if there are any issues that arise, under-reporting, transposition of numbers, etc., instead of penalizing all of the clients that you're reporting on behalf of, the negatives would go to that account for the PEO to reconcile if they couldn't
reconcile the error quickly, they'd pay the penalty on
that account.

MR. HALSTROM: What Jim Halstrom is saying is the
purpose of the administrative rules is to remedy
deficiencies in the underlying statutes. And that's
obviously a circumstance that wasn't contemplated. And it
seems like an easy fix.

MR. WANG: I appreciate the suggestion.

MS. McHENRY: That's all of my comments.

MR. SORENSEN: I guess, Art, that leaves me. I'm
here on behalf of ADP Total Source. ADP is a large PEO.

It's not located in Washington State, it's not currently
doing business in Washington State but remains very
interested both in the legislation that's been enacted and
considered during the course of this year. It is also
very interested in the nature of these regulations that it
bears on how Washington would be looked at as a place to
potentially do business as a PEO. ADP would share
virtually all of the comments and concerns that have been
expressed by domestic PEO's, by NAPEO and by others.

I would note a couple of specific areas of concern
that have come up. And, by the way, although we only got
the materials yesterday outlining the various issues, we
very much would like an opportunity to respond more
completely in writing and we plan to do so in the very
near future. We just did not have time to provide all of
that for you here today.

A couple of specific issues that have already been
dressed that ADP feels very strongly that with respect
to the treatment of existing PEO clients, that they should
stay under the PEO's unemployment insurance number and new
clients would be reported under the client's ID down the
line. But I think ADP feels strongly you should not try
to remanufacture as others have suggested, have them
engage in some retrospective revisions. That is not how
the system was set up and we don't believe it should
operate that way for the reasons that others have already
spoken to.

Secondly, Drew Thoresen made mention of powers of
attorney. And ADP feels as not a domestic company that
it's important that a generic power of attorney be allowed
in Washington State if a power of attorney is going to be
used rather than a state-specific power of attorney and to
the extent possible, it needs to be something that is easy
to use, easy to be accommodated, not requiring
notarization and simply indicating the client's wishes
with respect to the lines of authority. So we would
recommend a very generic power of attorney be allowable
if, in fact, one is going to be used.

I won't repeat other issues that have been addressed
elsewhere but ADP shares the concerns that have been expressed by NAPEO and others that the whole purpose of the PEO is to relieve the administrative burdens from their client employers. That is why those clients come to the PEO's. There is great value in that. To the extent that the rules may unintentionally have the effect of adding some of those burdens back in, it greatly diminishes the value that the PEO brings to the table in the business relationship and what they're offering to those client employers. And we would ask that as the Department looks at the draft regulations, that to the extent possible it recognize the fundamental business purpose of the PEO entity and to the extent possible allows the PEO to shoulder those administrative burdens and those interactions with the Department on behalf of their client employers and would encourage the Department to configure the rules accordingly.

MR. WANG: Let me go back to your power of attorney point there. Can you explain more about what you mean by if we don't require notarization of things, how can we make it effective? How could we do a generic one that did not have -- and I'm assuming that we would need, for example -- or should I assume that we need an actual signature as opposed to electronic form? Why not have a notary requirement as part of that?
MR. SORENSEN: I think certainly for out-of-state PEO's, they would like the latitude to be able to provide the most easy indication to the Department of the client's intention to direct that power that could be made available and effective. If the Department requires a whole notarized, date-specific power of attorney, I think it would simply add to the administrative burdens and be more difficult to operate. We simply are asking that the Department looks at the options that are here, use the most generic, easy-to-use form of allowing that power of attorney to be exercised.

MR. COHN: I think one place the Department might look is L&I with regard to workers' compensation for PEO's and their clients in the state. And they have a form that the department has utilized that authorizes -- it acknowledges that the client knows what's going on in the relationship and authorized the PEO to act on behalf of the client. It's not a POA. It's a form that the department has come up with. It has, to my knowledge -- and gentlemen, correct me if I'm wrong -- worked effectively here in the state and accomplishes, I believe, everything that needs to be accomplished without providing some of the onerous burdens for both in-state and out-of-state PEO's as long as there's consistency.

MR. SORENSEN: That would be acceptable and
Public Meeting on Unemployment Tax Rules, 6/26/07

completely keeping with what I'm thinking of, something
that provides guidance to the Department as to the
client's intent without requiring the usual legal
complications.

MR. WANG: Because you were saying not state specific
before. But this would be an acceptable kind of
state-specific one?

MR. SORENSEN: Well, certainly the informal
indication that Todd has indicated would be preferable to
the more formalized notarized power of attorney. Although
that is a Department of Labor and Industries form, we'd be
glad to look at it.

Once again, we've only taken a brief look at the
materials and we'll elaborate further in writing.

MS. McHENRY: I just wanted to add to Mel's comments.
When you have a notarized -- when you require the client
to take an additional step and have something notarized,
then that delays the time that it takes for the client to
get the form back to us. And then it also delays the time
for us to get the form to ESD. And so you may have a
client coming on board and it might be a 45-day process
before you can actually get the client processed and on
board. So having the client take an extra step when it's
not necessary, I guess it's preferable. And I think the
regulations or the statutes does allow for various forms
of authorization, not just a power of attorney but also
like a confidential client authorization, some type of
form developed by the Department. And I think it would be
preferable for us, as well.

MR. HEATON: I'm sure that the Department already has
this kind of thing in place for payroll services. And I
doubt whether they have to be notarized. Because this is
not uncommon. All payroll services have to have
authorization. And I think many of them are POA's. But I
don't think they have to be notarized. So the Department
already has something in place that you might want to look
at to see how they're doing it for payroll services.

MR. HALSTROM: This is kind of rhetorical, but put it
in the context of the type of client that many of these
PEO's are going to have in Washington, they're major
corporations. And who is it that's going to have
authority to execute a power of attorney with the client
company? That of and by itself is going to be
problematic. Ask Boeing for a power of attorney. How
long is that going to take to get an answer?

MR. THORESEN: Just one other comment on that. Keep
in mind the L&I form is a good one, it works very quickly,
it's very efficient. We're not going to be signing up to
pay the Employment Security Department for nonexistent
clients. That's just not going to happen. If I'm not
MR. COHN: I have three additional comments to add that are more specific than my first set of comments. Specifically, referencing some of the numbers here on the questionnaire that you sent out, 7.4, 7.5 and 7.6 for those following along, the first issue is here with regard to utilization of a bond. For those that were keeping tabs on the legislative process this year as this bill came along, it was an area of much discussion. And ultimately, it was something that the Department had agreed and Jim, I don't know if that colloquy ever made it on the floor of the House or not, but there was at least an attempt by the Department that said they could promulgate through rules that a bond could be used to secure payments on behalf of clients. And I think this is what 7.4 is trying to get at here.

I want to make two comments here. One, as I think it presumes here, that is a voluntary issue. If PEO's do, in fact, want to take out a bond payable to the Department for payment of back taxes, unpaid taxes, etc., that they may do it.

Secondly, however, I do think there should be some
specific language with regard to that bonding. And I think as we submit some written comments and include some of our thoughts and suggestions there, but this is a mechanism too as the system changes over, what a PEO has historically done is to say to a small business that as the employer under the current statute, we are assuming this liability on your behalf as an employer. And although the law is affirmatively changing to capture the experience at the client level, there are some PEO's that would also like to still maintain that we are securing that liability on your behalf. And they could do so if they chose through a bond payable to the Department for any late back taxes, penalties etc. I would certainly just want to note that we would like to see something on final regulation that acknowledges that it is a voluntary thing but is something that could be done by a PEO. And we can potentially comment too on what we think might be either a fair limit or no limit at all, the PEO just wants to do it, they can take out a bond for whatever amount they want. And then if they have done so payable to Employment Security, Employment Security would look to the bond as for remedy for unpaid taxes and liability before they would go after the client if they're in dispute.

MS. MARSH: Can we take a brief break?

(Recess taken.)
MR. WANG: We had a couple people join us that I
didn't get a chance to -- I should have had them introduce
themselves. So if I could get the people who came in just
to state your name and even if you don't wish to speak at
this point, but just to state your name just for the
record and spell your name also for the court reporter.

MS. MADISON: My name's Maria Madison. I'm with
Landis and Associates. And my last name is Madison,
M-A-D-I-S-O-N.

MS. McALEENAN: I'm Mellani McAleenan. I'm from the
Association of Washington Business. Mellani,

MR. WANG: During the break I just wanted to mention
a couple of things. I just wanted to re-emphasize that,
first of all, what I'm trying to do here is simply to
explore issues with you and not to state, "This is what
the Department's position is," but simply to explore --
when I'm asking you questions and things, what I'm trying
to do is explore the issues.

Drew, I think, had some comments that he was going --
I asked him to put on the record.

MR. COHN: It was me.

We were talking about the bonding issue. I think I
finished on that. With the ability of a PEO, if they
choose to, to utilize a bond at some funding level which
is yet to be determined to secure liability, and what that
would do is, at least in terms of the collection process,
it would allow, if there are any deficiencies in payment,
reporting, penalties, etc., the Department would, first,
instead of immediately going to the client, first would go
to the bond as a mechanism to secure that payment.

The second concern or issue I wanted to raise is on
page 5 again and 7.5. It talks about under what
circumstances may the Department revoke a PEO's authority
to act as a co-employer. This is, I recognize, a part of
the statute. Clearly it's undefined what "substantial
failure to comply" would mean and what remedies the
Department would have to revoke that ability. I probably
want to make it clear that A, the revocation of a PEO's
authority to act as co-employer if the Department were to
exercise that would be solely with regard to unemployment
insurance. I don't presume the statute would have
overarching authority anyway to go into other avenues of
the law, but hopefully we'd want to make it clear through
regulation that that would be it.

While I don't have any recommendations on what
"substantial failure to comply" would be at this point, I
certainly will provide some written comments on that.

I might ask you guys sitting at the table if you have
any thoughts on this. I mean, it's a little bit of a head
scratch for us since we are moving towards a
client-level approach for utilization of unemployment
insurance rates and I recognize that there may be some
issues with regard to late payments, underreporting that
the agency, in particular a PEO, may be involved in. But
beyond that, can you all think of any other type of
occurrence when you think the Department might have the
authority or want the authority to revoke your status to
report on behalf of your clients?

MR. HEATON: I assume if we just simply don't play by
the rules at all that we're not nice to play with. I
think the Department has a far greater challenge than
that, and that's to identify the companies who operate on
a daily basis as a PEO in the state that will not come
under this and what are the penalties for those who are
acting as PEO's and don't even register with the
Department. You'd be surprised at how many large
companies in the state pay the actual paychecks, but the
employees report to work under another company. That's
very common.

MR. WANG: I'm sorry, say that again. How they do
what?

MR. HEATON: It's very common for companies, for
employees to receive a paycheck from one company but
actually report to work for another company.
So if they take away the right for co-employment, what does that mean? I don't know. Should we go back to one report?

MR. COHN: I guess I'm a little confused. And again, I recognize it's in the statutes so there's little you can do to change the statutes. Really, just it's explaining or further clarifying the statute. The co-employer definition in the statute is really allocating rights and responsibilities. Here, in at least the unemployment insurance statute, what that means is the allocation of reporting is first given to the PEO, the PEO must report but it must be at -- you're utilizing the client rate. So I don't really know what the co-employer -- revoking that co-employer. I think it's probably just revoking the ability of a PEO to report.

MS. McHENRY: I would also just make an additional point to that. I think any time that you're revoking an entity's rights, I think there should be some type of process before that revocation occurs. So I hope that whatever provisions are put in, if there are, that there is some type of formalized process prior to revocation, that the revocation is just not because someone decided that it was warranted. I think there should be a hearing of all the issues, some type of investigation process, some type of due process. That would be my concern.
And with regards to substantial failure, I think to me, the only issues of substantial failure would be the nonpayment of taxes. That would be the biggest issue and the most important issue the Department should be concerned with. I think reporting and things like that are smaller issues, all very important. But I don't know to what extent you can say, you know, our authority should be revoked.

MR. COHN: My last statement, at least was, I think, piggybacking on Andrea. It's the appeal process for PEO and clients within all of this. I think it applies globally to the whole process here. I'm making the assumption that through regulation, that some type of appeal process will be defined. And maybe under that appeal process, it defines what is substantial failure to comply. If that is determined by the Department. An appeal may be lodged and the appeal process is X, Y and Z. I think that's something that we at least be looking for as a fairness and equity issue for the industry, that there is a right of appeal before a final determination is made by the Department.

MR. WANG: I guess I wasn't clear at the beginning because I recognize we were still on, Todd, your 7.4 through 7.6. But I was talking to somebody during the break.
MR. THORESEN: You're talking about the subaccount thing I was talking about?

MR. WANG: Yes.

MR. THORESEN: I had mentioned to Art during the break that because of the issues where we have a parent company in another state, maybe they're having to report unemployment, and then we also have some of their employees in this state and we need to report them. What L&I does is assigns a subaccount to the client's account and we report then all PEO employees under that subaccount account number. If that client doesn't have any other employees to report, then they're not obligated to report and do a zero balance report. But if they do, then they're reporting the employees that they have under their number, we're reporting the employees that we have under their same number with a subaccount attached to, like, say, an 01 or an 02. So it's a way to resolve some of these issues where there may be dual reporting.

MR. WANG: And then Lisa, you had an issue you were going to raise?

MS. MARSH: I just wanted to ask everyone here today to respond to the issue, if we can accommodate your request, what is your preference? We have a number of pieces of legislation going into place and a comment was made earlier regarding pulling old master business
Public Meeting on Unemployment Tax Rules, 6/26/07

1  applications of maybe a ten-year-old firm -- a firm that's
2  been with you for ten years, not reporting under its own
3  ESD for ten years. And for us, can't we find those, have
4  they been destroyed yet, what's the records retention
5  schedule. And that brought up to me the question of when
6  there are multiple pieces of legislation or otherwise that
7  will effect PEO's, would you like for us, as an agency, to
8  come at you with multiple requests for different pieces of
9  information or try to cull them all into one place? For
10  example, a piece of legislation requires the corporate
11  officer information including Social Security account
12  numbers for all employers, not just those reporting under
13  PEO's. Separate section, separate issue, separate
14  requirement also requires updates to that information.
15
16  Now, providing that some corporate officers may have
17  changed in an employer that you've had for ten years, am I
18  correctly hearing it expressed from each of you that you
19  want to, first, tell us your information, register your
20  current employers, and then later come back and tell us
21  all your current employers' corporate officer structure
22  and Social Security numbers and then have us come at you
23  again and request the percentage of ownership? Or would
24  you like for us -- again, assuming we can accommodate,
25  this is just to get your input -- come at you with one
26  request that consolidates each of those pieces? If you
Public Meeting on Unemployment Tax Rules, 6/26/07

could just speak to that so we have it on the record.

MR. THORESEN: My view of it is we shouldn't have to
supply any more -- for example, the corporation, when they
do their master business app, has to supply that
information and it's on record. So I don't think we
should be obligated to duplicate officers' names, home
addresses, Social Security numbers. Because if their
officers change, they report once a year to the Secretary
of State. They have to make those changes. So that
information is available.

In terms of supplying extra information that other
companies wouldn't be obligated, I would rather not have
to do that.

As far as the request for what we need to register,
my view is we get that all at once rather than
piecemealing it. And maybe the time to submit certain
data is a little different.

MS. MARSH: Before the other two answer, I want to
clarify that all employers are required to provide this.

It's not just a PEO?

MR. HALSTROM: But don't they do it through the
master business application? Isn't that how they get it?

MS. MARSH: No. We don't yet know how they do.
That's why I'm talking about new legislation. I'm just trying to get your input to address any changes in the owners, partners, members, the corporate officers of the business and changes in percentage of ownership of the outstanding shares of stock in a corporation must be reported to the Department at intervals described by the commissioner. And that is reporting to the Department, not through the master business application process. This is brand-new legislation. We're doing the same thing, as a matter of fact, this afternoon if you want to talk about it.

From a PEO standpoint, if this legislation piece is adopted to say you have to do it quarterly, as PEO representatives, would the industry prefer that we come here and say, "9:00 to noon, give us all your information to register your client's employers. 1:00 to 3:00, give us everything that you have to give -- that every employer has to give us in this update"? So that's just kind of to clarify the question.

MR. COHN: And I guess the question is this -- and I don't have the answer to it -- with regard to the PEO-specific piece that we've been talking about this morning, it changes the statute to affirmatively say we're not the employer for UI purposes which is what this next section is for. Now, whether we as an industry -- and I
Public Meeting on Unemployment Tax Rules, 6/26/07

1 don't think we've not talked about this ever -- want to do
2 this as a value-added benefit for our clients who are now
3 under the UI statute deemed to be an employer or not is
4 the question that we need to resolve in how we do that.
5
6 MR. HEATON: I personally would like to have all of
7 that come to my office. Because I then can assign duties
8 to the client if I need that information. But this is why
9 my request this morning is that all communication, if the
10 PEO chooses and the client authorizes, for it to come to
11 our office.
12
13 MS. MARSH: At one time or do you have a preference?
14
15 MR. HEATON: I guess that's why I'm confused on your
16 question when you say all at one time.
17
18 MS. MARSH: For example, there is a lot of
19 information that needs to be provided by September 1st.
20 Would you to like us to say -- and if you want to provide
21 the rest of this, we'll store it for you so you don't have
22 to provide it again in three months. I don't know.
23
24 MR. COHN: My question is on this new general
25 business section, I assume you're saying it's effective
26 January 1, '08; is that accurate? September 1 is the
27 PEO-specific registration. The new owner/officer
28 reporting rule, which is a separate issue, is effective
29 January 1 of '08; is that accurate to say?
30
31 MS. MARSH: No. Rules have not been adopted under
Public Meeting on Unemployment Tax Rules, 6/26/07

1 that section. That's what's going to be discussed 1:00 to
2 3:00. The provision requiring it is effective July 22,
3 2007. How it will be implemented is something that is
4 going to be discussed this afternoon.
5
6 I don't want to get into specifics. Do you want
7 these types of things, one request if we can do it even
8 though maybe you'll end up providing it a little earlier
9 than what those rules have been adopted or -- and if you
10 can't answer today and want to send stuff in writing --
11
12 MR. THORESEN: We're going to have to send something
13 probably in writing. But some of that information we're
14 just not going to be able to provide. So if you have a
15 public corporation as a client that's in some other state,
16 we're not going to get their officers' names, their Social
17 Security numbers, I mean, just for purposes of privacy.
18 So there's going to have to be some of that come directly
19 from the company.
20
21 MR. HALSTROM: I think you're going to have to talk
22 about this and send some recommendation to them. You want
23 to be the source of all information but you don't want to
24 be the source of all information is what we're saying
25 here.
26
27 MS. McHENRY: Sometimes when there's just a
28 limitation as to the information that you actually have,
29 my concern is the updating of these officers when they
Public Meeting on Unemployment Tax Rules, 6/26/07

1 actually change. We may not have any knowledge of that.
2 We would have knowledge, but I just -- I don't know if we
3 want to accept that responsibility of updating.
4   MR. HEATON: This is why we could have an option on
5 electing whether all communication will come to the PEO or
6 not.
7   MS. McHENRY: I agree with John's premise that the
8 more centralized of communications that the PEO gets
9 concerning the client, the easier this whole process is.
10 Because it provides a central place to access information.
11 So there's going to have to be some balancing. And I
12 think it's something we're going to have to talk about.
13   MR. THORESEN: I agree with the premise but we're not
14 tracking the ownership changes in the companies, we're not
15 tracking that all the time. That's not our
16 responsibility. I don't want the obligation for something
17 like that.
18   MR. HALSTROM: I would suggest this is something
19 that's not going to be resolved today. And as an
20 industry, you're going to have give some consideration to
21 it and make a recommendation because Lisa raises a very
22 legitimate reason.
23   MR. WANG: Any questions?
24   MR. COHN: Just a general question and I know I
25 addressed this very early on in the process. I guess I
1 would just throw a question out to you or your staff
2 that's here. When timeframewise might we expect to see at
3 least some forms for the registration process? I
4 recognize that the final regulation, there will be a
5 meeting as we talked about it in late August or early
6 September with a November 1. I know we also talked,
7 however, about the forms necessary to effectuate the
8 September 1 registration and actually being able to
9 collaborate on that. Any type of ball park you might be
10 able to offer us? It can even be a three- or
11 four-week-wide time frame that we might expect to see
12 something.
13       MR. WANG: I'm sorry, I don't. I just don't have the
14 timeframe to offer you on that. I recognize the concern
15 and I appreciate hearing your concern about it. And
16 certainly, we will discuss that internally and factor that
17 in internally. But I simply can't give you a date at this
18 point, even a rough idea.
19 Other issues that people want to raise including
20 anybody from the staff side also?
21
22                     Summary of What's Next
23
24       MR. WANG: If not, I'll just call this to a close
25 then. I appreciate your input on things on this. Again,
there are provisions about how to contact -- how to
provide written input under the outline of issues under
about the fifth paragraph in there. It gives an address
and so forth where to contact. And you can also contact
me directly about the specifics of things. My phone
number is listed and e-mail is listed in the sixth
paragraph there. So please feel free to do that.

Although for contacts with things, we will have to try to
keep that on the record for the purposes of the rulemaking
procedures.

With that, if there's nothing else, I think we've got
all the information from you on things. And we will
adjourn until 1 p.m. and we will continue with the more
general tax areas at 1 p.m. Thank you all for coming.

(Recess taken.)
MR. WANG: Let's go ahead and get started. This is Art Wang. I'm the facilitator for today's public meeting on tax rules. My title is special assistant for unemployment insurance at Employment Security here. I will be doing most of the substantive work on the tax rules or playing the lead role in the substantive work on the tax rules but I'm not the ultimate decision-maker on them. This is the first meeting we've had on tax rules. Some of you have heard this stuff before but I'm going to go through it again for this afternoon's session.

We had a session this morning dealing with part of the subject of PEO's. But in the 2007 Legislature, we enacted quite a few bills dealing with employment taxes. We're here today to consider three of those issues. This morning we did PEO's; this afternoon we're doing other legislation and general taxes and also transfer of business things that follow up to a couple meetings that we had in November and December of last year.

There is a separate session public meeting on claimant fraud and overpayment which will be on July 10th. And there will also be a separate one on self-employment.
which has not been scheduled yet.
There are materials here on the table, the agenda and
the sign-in sheet. People on the phone have also received
the agenda previously by e-mail yesterday. And there are
copies of the bills and the outlines of issues for this.
And again, the people on the phone also received that by
e-mail.
I'm going to ask people to go around the room and
introduce themselves and to spell out their name for the
court reporter. We do have a court reporter here. So let
me start with just the people on the phone. Gary, why
don't you go ahead?
MR. G. SMITH: Gary Smith. Independent Business
Association.
MS. WHITLOCK: Susan Whitlock for Employer's
Advantage. We're a PEO.
MR. WANG: And you're located in Missouri?
MS. WHITLOCK: Yes.
I'm with Landis and Associates.
MR. C. SMITH: Christopher Smith, Employment Security
Department, UI policy.
MR. STEVENS: Larry Stevens, S-T-E-V-E-N-S. And I
represent mechanical contractors and electrical
contractors.
Public Meeting on Unemployment Tax Rules, 6/26/07


MR. GORRELL: Neil GORRELL. Deputy assistant commissioner in unemployment policy.

MS. TENNYSON: Mary Tennyson. Senior assistant to the attorney general adviser to UI tax section.

MS. MARSH: Lisa Marsh. Director of UI tax and wage operations.


MR. WANG: Thank you, all.

MR. WANG: The process is that we've outlined concepts and issues. We've not done any drafts yet at this point in terms of draft rules both from the agency standpoint, agency culture and from the standpoint of having checked with stakeholders. The general feedback we've gotten is that there really is a strong preference to comments first, not to have rules drafted at this point but to encourage comments first so it doesn't look like we've already decided on things and then are simply asking
Public Meeting on Unemployment Tax Rules, 6/26/07

1 you to comment on what we've already decided.
2 So the purpose of this public meeting is the first
3 step in the process by receiving comments. I distributed
4 a list of issues yesterday afternoon. I realize that most
5 of you have not had time to go through that or prepare
6 responses to that at all. I would encourage you to
7 provide responses over the next -- prior to that next
8 public meeting and strongly encourage you to do it early,
9 preferably by July 13th.
10 I'll take the lead in drafting the rules over the
11 next two months. Hopefully, they will be available by
12 late August. And we then hope to do a second public
13 meeting around the end of August or early September. So
14 make sure we have your contact information by signing up
15 on the sign-in sheets or providing feedback to or getting
16 on the list with Juanita Myers as is indicated on the
17 outline of issues. There's contact information on that.
18 By mid-September we would plan to file a CR102 and
19 put the rules in final format at that point. To the
20 extent necessary, we would also at that point have to file
21 a preliminary cost benefit analysis and, again, to the
22 extent necessary, a small business economic impact
23 statement. We don't know whether those things are going
24 to be necessary at this point, but if they are.
25 By the end of October then we would hope to do a
formal public hearing on the final rules. As a practical matter, it's hard to change the rules significantly at that point, so I would encourage people to give comments especially at the second public meeting around the end of August or early September.

In late November we would anticipate filing the CR103 which is to announce the adoption of the final rules and have rules effective for January 1st. So that's the general timeline of things.

We have tried to organize things by topic areas to some extent dealing with PEO's this morning and then the general tax package this afternoon and then transfer of business from 3:00 to 4:00. But we also recognize and want to accommodate people if they wish to address other topics, please feel free to do so. We have had it as kind of a pretty informal open discussion and that seems to have worked the best way of doing things.

When you make comments, please identify yourself by name. And you've already spelled your name once so that should be okay.

General comments are okay whenever you wish to raise issues. But if you want to address specific issues, it will be helpful to refer to them by number. They are kind of indexed by number or indicated by number on the different lists that I provided you.
In terms of what we hope to achieve through the rulemaking process, it's always kind of a mixture of different goals. So I would appreciate comments on this, as well. Because, for example, some of these goals conflict and it's hard to find the right balance on things. But we would like our rules to be on the one hand, I think it's desirable to have them comprehensive so we gather information altogether in one body instead of scattered all over the place between statutes and rules and policies. It would be helpful to have them clear as much as possible, to be concise at the same time to avoid some of the unnecessary duplication, to have them predictable so that they provide legal standards for use by both -- ultimately, ALJ's, reviewing courts and also the parties, that they should be consistent both internally and externally, transparent to make our policies affecting stakeholders available to the public, friendly for compliance purposes so its easier to understand and comply, friendly for enforcement purposes so it's easier for the regulators to determine if compliance is achieved, and also fairly easy to maintain. So there are a whole host of different conflicting values in talking about rules.

A couple of general themes that I hope people might
address at some point, should the rules be a bare minimum under the principle that kind of less is better or do we want to emphasize more of the comprehensive nature and the transparent nature of them so that we tell people what we're doing and they know what and how we're doing it.

Another contrast is should the rules allow Agency discretion in being flexible to the maximum extent, or on the other hand, should they emphasize consistency and uniform treatment even if that makes them more rigid and, perhaps, unfair under -- potentially more unfair under specific circumstances. So those are some general principles to consider.

Public Comments on General Tax Issues

MR. WANG: And really what I would like to do is have input and discussion from people who have concerns about what we should be doing and what we should be looking at in rules. So nobody has specifically indicated that they wish to speak. I'll start with the people in the room here and just kind of go down the table and then get to people on the phone also. So Mellani, let me just start with you.

MS. McALEENAN: I'm not sure how much I'm going to be able to comment today. As I mentioned to you earlier, we
I actually have an AWB meeting tomorrow at which time we'll be talking about this. But I do want to offer a compliment. I don't remember having seen this type of format before in terms of what specific questions you're looking for as to answer and I think that's very helpful. I think that it really is going to help me get with my members and focus the discussion on the areas that really matter. So like I said, I don't remember seeing this before. But if you had it, I think it's really great.

MR. WANG: Thank you. I invented it.

MS. McALEENAN: Good job. I really like it. I don't know in terms of commenting, do you want to go down through the list that you have in here?

MR. WANG: If you have more general comments, this is kind of an open input session for are there issues that we are -- that are not included. You're certainly welcome to comment on the issues here or to send in written comments. But also, if there are issues in broader general terms, people are always concerned about rules. Here's your chance to tell us what we should be doing about rules.

MS. McALEENAN: Let me hold off for now and come back to me. I'm not quite ready.

MR. WANG: Larry, how about you?

MR. STEVENS: I don't think I have any comments right
Public Meeting on Unemployment Tax Rules, 6/26/07

1 now. So I'm listening. I mean, quite honestly, I need to
2 remind myself what this bill is all about.
3
4 MS. McALEENAN: And going down through the list of
5 questions, that might be helpful in regard to that.
6
7 And to be honest, I really thought you'd have a
8 better turnout today. I think maybe it's because of the
9 weather. I expected people to be really involved.
10
11 MR. WANG: We did try to send out a lot of notices to
12 people. There have been relatively few responses on it.
13
14 I've been surprised how few responses there have been.
15
16 MS. MADISON: I want to comment on the tax rate
17 calculation and the employer representative section and
18 the very last item, other unemployment tax issues.
19
20 The claimants who file for unemployment benefits and
21 simply going through the motions just to collect the
22 benefits but aren't actually making an active work search.
23 And that can be proven by your history of them filing year
24 after year.
25
26 MR. WANG: I certainly don't want to cut you off, but
27 at the same time, I do want to address that we are trying
28 to focus on the tax side of things as opposed to the
29 benefit side of things here. Obviously, that does have an
30 impact on taxes. But the emphasis here is we're trying to
31 emphasize the tax side of things. But by all means, go
32 ahead.
What specifics -- can you give me numbers of what specific sections you were talking about if there were numbers?

MS. MADISON: That's referring to SHB 1278 modifying the industry average of unemployment contribution rate.

My comment is that our company, we help employers try to manage their tax rates by helping them contest valid claims -- or invalid claims to help control their tax rates at the end of that year. And what we have seen is that small employers who aggressively try to manage their tax rates so that they don't get increased the following year, they do everything possible but they still seem to pay a lot of taxes and they have zero claims. And we also see other clients that have numerous claims and their tax rate -- their taxes paid as payroll, for example, they pay maybe $4 to $5 million in taxes but then their employees collect $10 to $15 million. So they just see the unfairness there. There's no incentive for the larger employers to reduce their tax rate or to control it. And the smaller employers are the ones that are usually working harder to control it.

MR. WANG: Can you elaborate a little bit more and give me examples? What kind of things do you mean? What would you like to see us doing differently?

MS. MADISON: I would like to see an incentive for
the larger employers to try and manage their unemployment benefits being paid to their employees. It seems to be a huge tax burden on the system. And the smaller employers are the ones that are subsidizing these larger employers. There should be an incentive for the companies that are trying to manage their taxes.

MR. WANG: Any particular means of providing an incentive that you're considering or that you're suggesting?

MS. MADISON: Well, if somebody's already at the max and they're always going to pay at the max, what is the incentive to them at this point? There should be incentives for the smaller employer. Okay, you're managing your tax rates each year, maybe give them a discount. And the larger companies that don't make the effort to manage their unemployment, maybe give them an increase. And if they do make the effort to manage it, give them a discount also.

MR. WANG: Isn't that reflected in the experience rate, though? Are you saying that that's not sufficiently recognized in the experience rating of them?

MS. MADISON: No.

MR. WANG: And why is that?

MS. MADISON: Well, the only example I can give is some employers don't -- well, the one industry I can think
of is, for example, like the fishing industry. They know that a lot of their employees are not really looking for work during off-seasons. And those particular employees are on vacation, they're out of the country. And the employers are aware of that but they don't make the effort to report that to the State.

MR. WANG: And you said you had other things under employer representatives?

MS. MADISON: Just in general being contacted by the Department. When we work with the adjudication -- the telecenter, some of the senior adjudicators, they are aware that some of our clients do have representatives. But the new adjudicators seem to have trouble finding that information out and they call the employers directly.

And at times when we need to get notified for appeals, we do not get notified and that causes problems. As many times as we let them know that we are representing a certain client, this information still is not available at some point.

MR. WANG: Again, our focus has been on the tax side of things rather than this. But I appreciate your comment on that.

Other issues that you wanted to raise?

MS. MADISON: No.

MR. WANG: Gary, how about you?
MR. G. SMITH: I'm working on it right now. But one of them is you have a big switch in the application of coverage on corporate officers. It used to say in the law 51.04.165 the corporate officers were exempt unless they opted in and now this legislation in Section 4 changes it, they are in unless they opt out.

And in the discussion when this legislation was developed, we picked up a significant amount of the language of statutory from RCW 51.12.020(8) in the industrial insurance law dealing with corporate officers, where in that case, they are in unless they opt out which is the place that you're going.

And I want to make sure that to the maximum extent possible that we can have commonality between what's done in industrial insurance and what's done here. It will ease your administrative challenges in implementing this law, it will make it a lot easier for employers to know what's going on. And so I think that's an important area that you need to try and maximize commonality.

MS. McALEENAN: I would second what Gary has to say. And I think it goes beyond perhaps just this section. I haven't had the opportunity to really think this through. I think he's right. To the extent that UI rules can be consistent with workers' compensation rules, that's very helpful for employers in regards to what the definition of
whatever is or isn't, just to have the definition of
something be different in one than it is in the other is
very difficult for a number of our employers. So I
wholeheartedly agree with what Gary is saying.

MR. WANG: One of the difficulties I know in looking
at that section -- again, I'm not trying to present
Department position at this point -- but I'm just saying
that one of the difficulties in terms of looking at how to
be consistent with workers' comp and Labor and Industries
in those particular sections, and we're talking primarily
about Section 4 of 5373, part of that language was drawn,
for example, from Section 4(b)(i) was drawn from the
workers' comp law as Gary referred to. But unfortunately,
the language also changed in various ways. They only
picked up part of the pieces here so that it leaves it
with references to manual labor, which is just totally
irrelevant to this particular section and just the way in
which -- I can't remember now offhand, but I believe that
the workers' comp law was drafted so that it includes
people unless they opt out, yes, but there are -- I'm
sorry. I'm going blank on the details of it. But it
doesn't work in the same way.

How should we try to conform things if it's just
phrased differently or conceptually differently in
recognizing that the intent was to conform to it, but
nevertheless, there are enough significant differences that makes it very difficult to do so? How would you suggest we do it?

MS. McALEENAN: I was waiting for a response from Gary.

MR. WANG: Gary, how would we do it?

MR. G. SMITH: I'm sorry. I've been waylaid. Bear with me. Somebody has interrupted me so I missed the question.

MS. McALEENAN: One way -- and maybe just to take manual labor as an example, and I don't remember the specifics well enough so I am speaking off the top of my head, but simply, if there's a definition of manual labor in workers' compensation, it may be that we adopt that same definition here. And I don't know if that's appropriate or not. But I think that's to some degree at least what I'm talking about is the definitions are consistent with both. I don't know if that simplifies or makes it more difficult.

MR. G. SMITH: I have to go back and do some research on that issue. But again, to the maximum extent possible, I think it's important that we stay consistent to avoid you guys going to a lot of extra work and employers going to a lot of extra work. But I understand the question is if they're doing manual labor, can it be exempted. Is
MR. WANG: No. I was just using manual labor as an example under that statute. Because you referred to how portions of the corporate officer exemption under 5373 were drawn from the Labor and Industries Act. But it's only pieces in such a way that makes it extremely difficult. As an example, the way it's structured here, part of it is copied literally but in a way that no longer makes sense. That piece with regard to manual labor is that they are -- let's see. It says, "Without regard to the officer's performance of manual labor."

MR. G. SMITH: Part of that has to do with --

MR. WANG: Gary, let me finish. "Without regard to the officer's performance of manual labor, if the exempted officer is a shareholder of the corporation." The problem is here that without regard to the performance of manual labor, there's no other reference to manual labor here. So it just doesn't make any sense in the way it follows in this particular section here.

MR. G. SMITH: And quite honestly, you took that from workers' comp law because there is a good deal about that in workers' comp law.

MR. WANG: Right. But the problem is when we borrow and somewhat piecemeal and then on the other hand try to conform the two, how do we go about doing it when it just
MR. G. SMITH: Well, there is a process that you're all going to undertake. There is a separation here between public corporation and nonpublic corporation which is an important distinction. And most of your corporations in the state of Washington are going to be nonpublic. There is a process that L&I uses. And to the maximum extent that you can match up on that process, it's going to be better for you and for them.

And I'm more than happy to work with you, but you wanted comments and I think that's an important comment. I understand you reading this. And they did. They took the essence right out and I didn't even look at that part when they did it. But they took that right out of the workers' comp law.

MS. McALEENAN: I'll have to get back to you on that one. I don't do workers' comp in -- with UI. So that's a whole new arena for me. So I think we'll need to get back to you on that.

MR. WANG: And I don't mean to focus too much on that one particular section. I'm just using that as an example. I understand the principle of trying to do things as much as possible with another agency and be consistent with it, but at the same time, sometimes it's extremely difficult to do so from our end in terms of how
do you apply this specific law when the law is --

MR. G. SMITH: If we need to fix it in the 2008
session, we can. And I think that's part of your
rulemaking process. Here's the essence of why that
provision is in there: They've gone out and companies
have incorporated and put all of their people as officers
of the corporation and they are a roofing contractor or
they're a framer or they're some other high-hazard
industry. And this is to stop them from doing that. It
doesn't apply generally in what you're doing. So part of
your rule-development process needs to look at does this
fit, and if not -- I mean, the previous comment about
fishermen. You've got some stuff in here about people
qualifying for benefits for UI and the essence of what
were they doing and how do they qualify. If this doesn't
fit, we can fix it in the 2008 session. And I think
that's part of your rule-development process.

MR. WANG: Other comments that you have, Gary?

MR. G. SMITH: Do you want a reference to that
provision that's in the workers' comp law?

MR. WANG: Sure.

MR. G. SMITH: The reference to that provision is

MR. WANG: Did you have other comments?

MR. G. SMITH: Well, I haven't looked at all of your
questions on the penalty section yet. That's going to be an area of concern that we have. The essence of this section is you can't mess up I think it's more than once in three years. Is that the same kind of error or is that a different error? The Department needs to be pretty careful how they administer this thing. Because if people mess up -- and I can tell you, people are human and they're going to mess up once in a while -- well, the Department comes through and slams them with a $75 penalty. I don't think that's going to bode well for the Department and I don't think it's a good way to do business. So I think you need to be very careful on the implementation and the rulemaking on that particular set of requirements.

MR. WANG: I think the statute is five years, actually.

MR. G. SMITH: Is it five? Okay. Then that's even worse.

MR. WANG: Other comments or other areas?

MR. G. SMITH: By the way, I'd like to throw out -- I echo Mellani's comment about I think this is an extremely constructive, productive and welcome process that you're engaging in. So we commend you for it.

MR. WANG: Thank you.

Do you have other suggestions? You've been an
advocate of having us review our rules for ages. Now's your chance. What do you suggest?

MR. G. SMITH: I'm sorry. I didn't hear the first part of your question.

MR. WANG: You've been an advocate of having us review our rules for ages. Now's your chance. What would you suggest?

MR. G. SMITH: Well, I wasn't quite prepared for that, Art. I'm looking specifically at the implementation of the legislation that you passed.

MS. McALEENAN: Not to belabor this point, but I think as a general theme for all rulemaking, consistency in definition is a good thing. Because when you look through, there's a lot of undefined terms like "significant" or "substantial" that if they are defined elsewhere in either rule or statute, I would think that it would be appropriate -- not knowing for sure what those definitions, if they are -- I think it would be appropriate to mirror those to the extent that we can.

MR. WANG: As a general preference, do you want to see statutes repeated in rules? Is that helpful in terms of bringing things together or is it negative in terms of just more rules, more redundancy and unnecessary?

MS. McALEENAN: I lean toward the latter but I haven't really fully thought that through. To the extent
that something is clear in law, I don't necessarily believe it needs to be repeated in rulemaking unless it is simply -- if the statute is such that an employer wouldn't understand it very well without it being worded in a different way, then I think there may be an occasion to reword it in rulemaking. However, in that case, we need to be very careful that we're not changing the substance of the statute in trying to make it more easily understood.

But again, to go back to my earlier comment, to the extent that it's clear in law, I wouldn't see any need to simply restate it.

MR. G. SMITH: I would like to echo Mellani's comment about rules should not establish policy, rules should implement policy. And I don't see it necessary. If it takes restating the statute in a rule to explain the application of the rule, that's fine. But you shouldn't just fill the WAC's with RCW's.

MR. WANG: Susan, how about you?

MS. WHITLOCK: Yes. Actually, I wanted to be on the PEO one and I didn't get notice in time this morning. I'm just doing a lot of listening and taking in and reading for information. I'm sorry I'm not giving a lot of input at this time.

MR. WANG: And I'm sorry. I missed Stephanie back.
there. I lost track of you back there. I didn't give you
a chance.

MS. HON: That's okay. Honestly, it's not my issue
area. I'm just here taking notes for Mark. So he'll
probably have comments.

MR. WANG: Is there anybody else? Any other comments
that people have?

MR. G. SMITH: Art, I'm working on this requirement.
I'm trying to refresh my memory on employers registering.
And I think instead of making you hang on the line here, I
will comment by the 13th I think is the date you gave us.
But I will probably give you some more ideas on that
issue.

MR. WANG: Can you tell me again which issue it was?

MR. G. SMITH: It's the issue dealing with the
requirement to register. I'm trying to find it.

MR. WANG: The portions of 5373 in terms of employer
registration at the top of page 6?

MR. G. SMITH: Yes.

Anyway, you raised a number of issues. This needs to
be to the maximum extent possible simple and
straightforward. It should be part of the master license
process. And I'm not sure where people would be left out
of that process. I've got to go figure that out also.

It says every employer effectively must obtain a ESD
MR. WANG: That's simply one of the requirements under the statute that employers must obtain an account number.

MR. G. SMITH: Yes. The Section 1(2)(a).

Anyway to the maximum extent possible, that's got to be coordinated and included with the master license application so there isn't something new.

You've got the requirement in there also about corporations and also includes the percentage of stock ownership of each corporate officer delineated by 0 percent, less than 10 percent, 10 percent or more. That's going to be -- that's new. That's going to be significant.

MR. WANG: Actually, the master business application already lists the percentage owned. It doesn't have it broken out into those categories, but it does list it.

You have to specify the percentage owned.

MR. G. SMITH: You're ahead of me. So I commend you.

You did your homework.

What are we doing about all the existing corporations that are out there? How much of that information does LBC already have and not have? I should say DOL. I mean, are you going to have to go out and ask the corporations
Public Meeting on Unemployment Tax Rules, 6/26/07

1 again?

2 MR. WANG: Some of that presumably should be on the
3 -- is required currently. One of the issues is what
4 happens -- how do we require updates, though. Because we
5 will be required to get changes -- to record changes in
6 that which are not necessarily recorded on the MBA because
7 I'm not sure what the update requirements are on the
8 master business application. If this statute, though,
9 requires us to be updated on the changes, how should we go
10 about that?
11 MR. G. SMITH: That's a question that I'm not
12 prepared to answer right now. But very carefully is the
13 best way I can say it.
14 MS. McALEENAN: That's helpful, Gary.
15 MR. G. SMITH: Well, I mean, it's going to be a can
16 of worms. The corporation sends in an annual report. But
17 you just list the officers. You don't list the percentage
18 of ownership. You're asking for a new data set that I
19 don't know that exists out there right now.
20 MS. McALEENAN: When we talked about this during the
21 session with our employers, particularly the larger
22 employers had a lot of concerns about how they were
23 actually going to accomplish this percentage of ownership.
24 So this is something that I definitely want to talk in
25 more detail with my members and get back to you on.
MR. WANG: There is a provision in 5373 Section 2(a). It does say that changes in percentage of ownership must be reported to the Department at intervals prescribed by the commissioner. So one of the issues is just how to do that exactly.

MS. McALEENAN: And that's something we will want to get back to you on.

MR. G. SMITH: Here's how you do that effectively, I think, is when they have to send their annual corporate report to the Secretary of the State's office. You can say within 90 days but you're going to have a lot of folks -- I hate to tell you, you aren't the first people somebody thinks of when they change their ownership provisions of the company is to report it to you all. So you can make a whole lot of folks be illegal or you can do it on an annual basis.

MR. WANG: But what happens when the change in the percentage of ownership drives a change in their status for unemployment purposes, whether they qualify or not?

MR. G. SMITH: And I'm fully aware of that issue. It is a difficult challenge. This wasn't a provision that I think, as Mellani has indicated, that was one of our high points. You can put a provision in there they've got to let you know within 30 days or 60 days or 90 days, but you're going to have a lot of folks who are going to be
probably breaking the law. Because it's just -- unless
there's some way of you notifying them on a regular basis
to don't forget to tell us. And I don't think that's
going to work.

MR. WANG: What about doing that in the quarterly
report?

MR. G. SMITH: You guys now request in the quarterly
report how many corporate officers. That is a required
item that needs to be filled out. There might be another
box on there, has there been any change in ownership among
corporate officers. Mark it off and there probably is a
supplemental form or something else that they can
complete. It will drive the big corporations nuts,
though, Mellani.

MS. McALEENAN: That's exactly what was going through
my head is I need to follow up on that.

MR. G. SMITH: Stock options and stuff like that.

MR. STEVENS: This is kind of a general question.

I'm trying to remember really the thrust of the
legislature when debated and passed this legislation.
We're talking a lot about corporations and corporate
officers. Is it your understanding the intent of the
legislature is that this is a corporate only? I mean, it
doesn't have anything to do with sole proprietors or
people who are not corporations that are employers.
MR. G. SMITH: The essence of the legislation, Larry, was to try and avoid the corporate officers from collecting benefits. If they are, in fact, they are in business, they control their own destiny because they're a corporate officer, are they then eligible for benefits? And if you read into like Section 5 or something like that, they're limited on their benefits.

MR. STEVENS: I understand that. But I guess I'm just -- as I read, in fact, page 1 and 2 of the bill, I mean the first section, existing law, says that every employing unit -- it clearly doesn't say corporation -- is every employing unit shall keep true and accurate records, etc. The new language in 2(a) says, "Each employer shall register...." So there's a change for each employer in the world, I mean, each employer in the state. Not just corporate employer in the state, but each employer in the state now must register. Is that your understanding that this was going to require every employer, sole proprietor, individual, a lobbyist who has his only employee and he's him -- that every employer shall register with the Department and obtain an Employment Security account number?

And then in it it says that registration must include names and Social Security numbers of the owners, partners, members or corporate officers. So I guess I'm wondering
what the breadth of this bill might have been intended to be.

MS. McALEENAN: Owners, partners, members and corporate officers, we kind of had this -- not in regard to this specific paragraph, but we had this discussion a little bit during session, what do those terms mean. And to an extent, they each are separate terms of art. Partners are members of the partnership, members are generally the "shareholders" of a limited liability company. So they each do have distinct meanings. And so to that regard, that paragraph to me would mean that it's applying to all of them.

To answer, though, with an example your question about a sole proprietor/lobbyist-type person, in theory, you would just exempt yourself from paying unemployment benefits, but you would never really collect and then have to pay taxes on yourself. And that's somewhat what this is trying to allow people to do.

MR. STEVENS: But you do think that what the legislature was doing was that every sole proprietor would now have to register themselves and exempt themselves?

And I'm not talking just about me, I'm talking about every mom and pop out there who has a business that's a sole proprietor from the Avon lady to whatever.

MS. McALEENAN: In regard to registration -- please,
Public Meeting on Unemployment Tax Rules, 6/26/07

1 Gary, jump in if I'm wrong or anybody else -- in regards
2 to just registering information, I thought it was
3 everybody. In regard to corporate officer coverage, I
4 thought it was specifically dealing with corporate
5 officers. So I guess the sole proprietor example wouldn't
6 hold necessarily for -- I think you're supposed to
7 register with ESD that you exist, but not in terms of
8 exempting yourself. That only applies to corporations.
9
10 MR. WANG: And you might also look at Sections 19 and
11 20 which do have provisions there for when employers
12 include -- when all services are provided by the corporate
13 officers and things of that sort. So there are some
14 things which, in effect, exempt you out in those sections,
15 as well.
16
17 MR. G. SMITH: The statute that you're looking at
18 actually has a genesis of 1937. And I believe that first
19 paragraph references a little bit of 1937. Because if you
20 go to 50.24.010, which is the requirement for making
21 reports on contributions otherwise known as taxes, it says
22 that every employer has that obligation. You would have
23 to have an account number in order to pay your taxes
24 except for reimbursable employers which it has a provision
25 in there. So I think maybe that first paragraph is a
26 little bit old, but the key word there is "employer." You
27 have to decide if you're an employer or not. And the Avon
lady, probably not. If you, in fact, have somebody that
you're withholding taxes on, yeah.

MR. WANG: And again, an employer is defined in
Section 19.

MR. STEVENS: I guess as I read it, it's a bigger
requirement on the general business community than just
corporate officers if it is now requiring all employers to
register with the Department.

MS. McALEENAN: I think they already have to.

MR. STEVENS: I guess I don't understand that. If
every business is required to register with the Department
of Employment Security --

MS. McALEENAN: Employer. You have to make a
distinction, Larry, between a business and an employer.
If you don't employ anyone, then you aren't subject to
Employment Security requirements. Does that make sense?

MR. STEVENS: That makes sense. I guess I'm just
thinking that's new language in this statute. It's being
suggested that's already --

MS. TENNYSON: It's already a requirement. It's
never been stated specifically in law.

MR. STEVENS: How can it be a requirement if it's not
stated specifically in law? So that's my question.

MS. TENNYSON: It's always been employers are
supposed to register but there's not been a specific
Public Meeting on Unemployment Tax Rules, 6/26/07

statement you have to register at any particular time.

MR. WANG: We're kind of venturing a little bit far field here. What we're trying to do is looking at general rules in response to legislation and also in response to what we should be considering in the tax field here. I understand, Larry, that you're raising concerns about the legislation, but the legislation has already passed. It's already adopted.

MR. STEVENS: If you're going to write rules about employers shall register, that appears to be new language in the statute.

MR. WANG: Anybody else? Other concerns or other things we should be looking at?

MR. G. SMITH: Can I ask a question, Art?

MR. WANG: Sure.

MR. G. SMITH: So we're going to put in comments up until the 13th. Help me out. We've raised a number of issues. An example is let's try and parallel to the extent we can with L&I. Are we going to do this in a collaborative relationship or do you just want us to put in comments and you all will move from there? Where are we going from here?

MR. WANG: As I tried to walk through in the beginning, the overall process is to -- well, we will take comments at any time, basically, up through the next
public meeting. But I would encourage you to do them by
the 13th. That's not an absolute hard-and-fast deadline,
it's simply that for purposes of my own schedule, it would
make it easier if you do it by the 13th. It allows more
consideration of suggestions and things.

We are trying to do some informal kinds of meetings,
as well. And some of those have been set, some of those
have not been -- a couple we're still working on. We are
trying to do a variety of different means of having
contact with people and getting input from stakeholders.
But I would encourage you to provide written responses,
again, to make sure that your other comments are received
here.

MR. G. SMITH: And I take it that you want us to put
in there that we're interested in discussing this more
with the various staff people of the Department or is that
just implicit?

MR. WANG: If you want to indicate that, that's fine.
That's certainly appropriate to indicate that. But I
would hope it would be more than that.

MR. G. SMITH: I'm going to talk about, for example,
the issue of corporate officers. I'm going to get my
viewpoints but offer to work with the appropriate people
at the Department to develop the rule.

MR. WANG: That would be appropriate and appreciated
Public Meeting on Unemployment Tax Rules, 6/26/07

if you indicate that.

MR. G. SMITH: I'm sure Mellani and others will probably do the same.

MR. WANG: But anyway, so the next step would be in terms of drafting language. And then that would be available sometime around the end of August in terms of the first draft rules.

Other comments or issues that you want to raise -- that anybody wants to raise? Is there anything else?

Susan, was there anything else on PEO's? We may have lost Susan.

Stephanie anything else?

MR. G. SMITH: One other comment. I appreciate you making telephone access available.

MR. WANG: If not, thank you all for coming. We'll just take a break until 3:00 and see if anybody else wants to come.

Public Comments on Business Transfer Issues

MR. WANG: Or actually, do any of you want to speak now to the next segment on terms of transfer of business? Are any of you going to want to speak to that?

MS. McALEENAN: I am actually not going to be able to stay for the next portion. So I would just -- what I
Public Meeting on Unemployment Tax Rules, 6/26/07

1 would have said if I stayed is this: In regard to, again, 2 just repeating my comment that I made elsewhere. You have 3 questions that should "goodwill" be defined or for SUTA 4 dumping, should "significant purpose" be defined. And 5 again, I don't know if there are definitions that already 6 exists elsewhere in law, and if there are, I would suggest 7 that we utilize those. But I have not gone and looked for 8 that.

9 Phrases like "significant purpose" are really 10 confusing. And I go back and forth on whether I like the 11 added clarity or whether I like having them be gray. So I 12 will have to put some thought into that, some discussion 13 about it with my -- with my AWB members and will be 14 getting back to you. This is an area, though, that 15 matters a lot to them. So we definitely will be providing 16 comments to you.

17 But I think for now my only comment is, again, my 18 theme for today is consistency. And that's beyond just 19 with L&I and workers' compensation to the extent that 20 these are terms that are defined elsewhere in other areas 21 of the law.

22 MR. G. SMITH: The successor/predecessor issue, that 23 needs to, to the extent it can, be consistent with L&I so 24 we're not having two different systems out there. I mean, 25 it's just going to be a mess. There's people with L&I
that try and avoid adverse experience rating also and they have provisions dealing with this. I did not spend a lot of time on this issue during the legislative session, but I think that we need to carefully look at this issue and not impose different requirements under Employment Security as compared to L&I unless there's some compelling reason to do so. So we have to look at the statutes and all that good stuff. But I think that's a major issue.

Your first question you asked up here is should the predecessor/successor relationship depend totally on the circumstances which requires a discretion in judgment. The more we do that, the bigger the gray area. I think, again, we need to go look at L&I, see what they've done, see how much we can follow L&I on this. You get the same thing, I would suspect, under the Department of Revenue, you know, who owes what tax obligation and when. Is this a predecessor tax obligation or a successor tax obligation? So we need to look at these other laws so we don't have two or three different approaches. We need to try and have a commonality to the maximum extent possible.

MR. WANG: I appreciate the thoughts.

Anything else that people want to bring up in regard to this? What I think we'll do is just take a break until 3:00 and see if there are other people who come in and want to speak to this. Frankly, I'm not anticipating
anybody, but I want to make sure we preserve that
opportunity.

Again, any last thought or any comments from people
who are here now who want to speak to the transfer of
employer or business issue?

MR. G. SMITH: One last comment, Art. I have another
obligation at 3:00 so I will not be there. So you don't
have to call or look for me because I'm not going to be
available.

MS. MARSH: I was going to offer that if Gary was
going to participate again, I'd just dial him directly and
so make sure we tell him that. But that just resolved
that issue.

MR. G. SMITH: Thank you.

MR. WANG: If there's nothing else, we'll recess
until 3:00.

(Whereupon, proceedings
adjourned at 2:20 p.m.)
CERTIFICATE

STATE OF WASHINGTON )
                          ) ss.
County of Pierce         )

I, Cheryl A. Smith, a Certified Court Reporter in and for the State of Washington, do hereby certify:

That the foregoing transcript of proceedings was taken before me and transcribed under my direction; that the transcript is an accurate transcript of the proceedings insofar as proceedings were audible, clear and intelligible; that the proceedings and resultant foregoing transcript were done and completed to the best of my abilities for the conditions present at the time of the proceedings;

That I am not a relative, employee, attorney or counsel of any party in this matter, and that I am not financially interested in said matter or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my hand on this 9th day of July, 2007, at Auburn, Washington.

Cheryl A. Smith, CCR, CVR
Excel Court Reporting
16022-17th Avenue Court East
Tacoma, WA  98445
(CCR License #3017)