Public Meeting on Unemployment Tax Rules, 9/17/07

EMPLOYMENT SECURITY DEPARTMENT

STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS

of

PUBLIC MEETING ON UNEMPLOYMENT TAX RULES

PROFESSIONAL EMPLOYER ORGANIZATIONS, UNEMPLOYMENT TAX LAW
CHANGES AND GENERAL RULES REVISION, BUSINESS TRANSFERS AND
SUTA DUMPING

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Date and Location

September 17, 2007      Employment Security Department
Monday, 9:00 a.m.       Maple Leaf Conference Room
212 Maple Park
Olympia, Washington

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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 Jill Will,
Joel Sacks and Christopher Smith.

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Welcome

Introductions

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Public Comments & Discussion on General Tax Issues

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MR. WANG: Let's go ahead and get started. I'll welcome you to this meeting which is the public meeting dealing with tax rules, starting this morning dealing with PEO's, professional employer organizations. My name is Art Wang. And I'm the special assistant for unemployment taxes with the Department. And I will be the facilitator for this.

This is the second public meeting we've had on the tax rules. The purpose of it is to receive comments and discuss the draft rules that have been published. We do have a sign-in sheet and I think everybody has signed in on that. There's also a copy of the rules, both for PEO's and other subjects over on the table as well as the agenda.

We had a first meeting on June 26 that dealt with three general areas: PEO's, other legislation and general tax issues and transfers of businesses. At that point, we had outlines of issues but no drafts to present. Now we've broken them out into four different drafts including...
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1 the corporate officers separately, although the corporate
2 officers will be reintegrated for published rulemaking
3 purposes.
4
5 We did end up establishing a second date for this
6 meeting in addition to today, and that's partly the
7 reason, I assume, why there are relatively few people
8 here. And so that will be held tomorrow.
9
10 Introductions

11 MR. WANG: But for purposes today, we do have a court
12 reporter here. Cheryl Smith is the court reporter. And
13 so when doing introductions, let me get you to spell out
14 your name if there's any doubt about your name, and also
15 identify the organization you're with. Let's go ahead and
16 do introductions now.

17 MR. HALSTROM: Jim Halstrom, H-A-L-S-T-R-O-M. And
18 I'm here on behalf of NAPEO, National Association of
19 Professional Employer Organizations.

20 MS. WILL: Jill Will, W-I-L-L, with the Employment
21 Security Department.

22 MR. RAFFAELL: Norm Raffaell, Weyerhaeuser Company.

23 MS. WILL: You better spell that.


25 MR. WANG: Actually, "Raffaell."

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You didn't say what "that" was.
MS. WILL: I will be very specific in my comments from hence forward.
MS. McALEENAN: This is Mellani McAleenan. I'm from the Association of Washington Business. Mellani, M-E-L-L-A-N-I; McAleenan, M-C-A-L-E-E-N-A-N.
MS. CRONE: My name is Pamela Crone, C-R-O-N-E. And I'm here today representing the Washington State Labor Council.
MR. SACKS: My name is Joel Sacks, last name is S-A-C-K-S. I'm with the Employment Security Department.

Rulemaking Process

MR. WANG: Let me just go over kind of the process and updated schedule of things. As I said, we had the June 26 public meeting. We received a lot of comments at that time. We also received a lot of written comments. Lisa Marsh, Jill Will and I met with several groups of stakeholders at various times to get input also. Based on the various outlines, the meetings, the comments we received, we put together the draft rules and went through the internal clearance and released them on September 7th. So we put them out publicly at that point.
These are still drafts. We need input. Now is the appropriate time both for oral comments today and also for any written comments no later than the end of this week, though, because we intend to file the formal proposed rules with the code revisor by October 3rd and file the CR-102 at that time with the code revisor on October 3rd. It's hard to change the rules significantly after that.

We will have an official public hearing after that at around November 1st to anticipate the emergency rules and client rates will be published and effective. And that's necessary because of just the timing to calculate the 2008 rates.

In late November we would file the CR-103 which announces the adoption of the final rules. And then January 1st, the remainder of the rules -- most of the rules will be effective.

I just realized I forgot to introduce the people who are on the phone as well as we have had one other person come in. So Susan and Rhonda, do you want to introduce yourselves?

MS. REYNOLDS: My name is Rhonda Reynolds, R-E-Y-N-O-L-D-S. And I'm with Employer Advantage. We are a professional employer organization.

MS. WHITLOCK: And I'm Susan Whitlock, W-H-I-T-L-O-C-K. And I do the unemployment claims here.
MR. JOHNSON: And I'm Jeff Johnson with the Washington State Labor Council.

MR. WANG: And Susan and Rhonda if you have difficulty hearing at any point, just say something or interject or whatever.

We did organize things kind of by topic areas, like this morning was supposed to be dealing with PEO's. But we will also accommodate people if they wish to speak on other subjects not at this time.

That's basically my introductory remarks at this point.

Public Comments & Discussion on PEO Issues

MR. WANG: We learned from the first meeting that people wanted to be a little bit less formal about things and do things more at a conference table for discussion purposes. And let me just stop at this point and see what comments people have. Or Jill or Joel, anything you want to add at this point?

Who wants to go? Jim, do you want to start?

MR. HALSTROM: I have no comments.

MR. WANG: You're going to save it for tomorrow?

MR. HALSTROM: Yes. I'm just here to watch.

MR. JOHNSON: So we're starting with PEO's?
MR. WANG: Yes. Do you guys want to go?
MR. JOHNSON: Sure. I guess first, I want to
compliment the Department on all the rules I read through,
I mean, the clear rule writing is very evident. They're
the clearest rules I have read from any agency. So good
job.

I think Pam and I, in discussing the two main issues
with the PEO section, the first one is on page 2 and it's
Sub (4). And it's by way of design and addition to the
language here. This is the language that gives the power
of attorney from the client employer to the PEO. And the
Department then sends a letter to the client employer who
is confirming that that's what they wanted. And that's
all fine. But what we'd like to see is at the very least,
the client employer is given the option to receive
information from ESD about substantive changes that may
have happened in policy, whether it's WAC or whether it's
RCW. It just seems that -- clearly, the PEO is going to
get all that information, which is a good thing,
obviously. But I think it's important for the client to
at least have the option to get the information as well
and they ought to know that if they decline it, that they
are affirmatively doing that so that they learn more about
the system as well. Because again, the importance of the
unemployment insurance system is to try to help employers
learn over time how to regulate their workforce, how to stabilize their workforce. So that's what we'd like to see added to that.

So that letter that ESD sends back confirming that they've given their -- the client employers give their power of attorney to the PEO, that either in that letter or some earlier correspondence, they give the client the ability to opt to get information from the Department directly as well.

MR. WANG: I'm trying to remember exactly what the form looks like. And I believe there are check boxes there for what the client employer can respond in terms of what -- describing that the PEO can represent me for this purpose, this purpose or this purpose or something like that. And I don't recall exactly -- I don't recall exactly how it's structured in terms of if there's something where it says that we want to receive information too.

MS. WILL: I believe there's not. I believe the options as it stands are send notice to me or send notice to the PEO. And I think it's kind of an either/or choice. And maybe that's what Jeff was commenting on. And I don't have the form in front of me either, but I believe that's what it is.

MR. JOHNSON: So I guess from our side, we'll take a
look at the forms, not having looked at them. But the suggestion still stands regardless of what the form looks like, giving the employer the option.  

MR. HALSTROM: May I clarify something? Jeff, I think she's talking one thing and you're talking another. She's talking about the forms applicable to the rates they're paying or things of that nature. I thought you were talking about general policy.  

MR. WANG: We're talking about the power of attorney form, I believe.  

MR. HALSTROM: I know. But the effect of checking the box.  

MS. WILL: I thought it's on the power of attorney form, but I could be incorrect about that. I'm not sure. I believe the effect is -- if I'm thinking of the correct form -- the employer would not be receiving the whatever information associated with their account. It would be sent to the PEO rather than to the client, I believe.  

MR. JOHNSON: And then the question is, I don't see anywhere in these regs -- and I admittedly did not read 53.73 last night as I probably should have, is there an obligation or duty on the part of the PEO in statute or reg to disclose information to their clients that they get from ESD? Is there any affirmative obligation? So that's the question.
MR. WANG: I don't believe there is any in statute and I know I did not put anything in these regs specifically addressing that point.

MR. JOHNSON: Because it seems to me that if there's not, there's two ways to get at what I'm trying to get at: Either PEO's in the regs have an affirmative obligation to send information on to the clients that are of a substantive nature or we give the client employers the opportunity to say, "Yes, I want to get the information," or "No, I don't," so that the possibility for education goes on.

MS. CRONE: And I would like to add that we have made clear that the client employer remains liable for the payment of taxes and any interest and penalties. And so certainly providing important information and educating the client employer would seem to be a necessary step before going to have an expectation, actually require that they are ultimately liable.

MR. RAFFAELL: And I was just going where Jeff had started from. It made me think of that. It just makes good business common sense if you have a joint liability on an issue or a potential issue, that you keep the parties involved. Now, I'm not real familiar with how the PEO's work, but my impression is they could have several clients. And then how do you inform the clients? Let's
say they're delinquent in their payments. It can end up in them having to pay the taxes. And again, notify all the clients or are you going to notify just the client and how do you separate that? You would assume there would be joint liability depending on the number of employees you have. And how does the Department plan to decipher something like that?

MR. WANG: I'm not sure if you were looking for a response on that at this point.

MR. RAFFAELL: No. I'll just let you have a couple of hours.

MR. JOHNSON: This concern that I have with these proposed regs has to do with the transition to client employers getting their own experience rating. I'm going to lay out the concept that I'm getting at first and then I want to ask about the specific example that's in the rules, which I didn't understand. I looked at it about four or five times and I still can't figure it out. But the concept is this: After Pam and I reviewed it and talked to others in our unemployment insurance tax force, we're of the opinion that what we'd like to see happen is this: That whenever -- as we do this transition period, rather than January 1, 2008, each client employer taking on the PEO's rate and then starting to build their own rate, that for any client employer that ESD has history on
in their files, that that history -- that the client
employer assumes their history as long as ESD has it. If
ESD does not have any history on the employer, and I mean
within the four years of setting the tax rate for the
client employer, if ESD has history, it gets used. If,
obviously, they don't have history, then this methodology
works just fine. But it makes little sense to us that if
you have history on a client employer that you would
disregard it. So that's the second point.

MR. RAFFAELL: I'd like to follow that. I assume,
Jeff, by history, you mean experience?

MR. JOHNSON: Exactly.

MR. RAFFAELL: The other thing I'm thinking of if I
was a PEO is how would I set up my clients. And I would
assume they would have a unit number for each client which
gives them control. If the business is no longer desirous
of using their service and cancels the agreement, if --
and I'm doing worst-case scenarios here. This is
something you're going to run into because someday,
something's going to happen. I think the PEO's are doing
a real good job so far that I can see of maintaining what
their position is. But if something does happen, what's
the Department going to do? How are they going to
decipher unless they have separate unit numbers or
identity numbers to keep track of individual clients? I
could see possibly if you don't address that issue, a PEO
could have one account number and just throw everybody in
there. They may have subaccounts within their own system,
but reporting to you could be a more difficult situation
if you're trying to decipher where liabilities are due.

MS. WILL: I believe, Norm, that the legislation has
clarified the reporting situation such that the client is
actually going to report under their own account number
rather than under a PEO account number or subaccount. So
the PEO retains the ability to report on behalf of the
client, but the client will itself establish a separate
tax account.

MR. JOHNSON: And my understanding of the
legislation, Norm, is that the PEO can submit one form
with all the client employers listed by their own tax ID
number, but they could do one form, just simplify things
for the PEO's.

MR. RAFFAELL: So that's the same as a unit number
then?

MR. JOHNSON: I think so.

MR. RAFFAELL: That was my concern.

MR. WANG: Jeff, just in terms of the concept,
though, just some of the difficulties we considered in
looking at that concept would be, one, just the sheer
logistical difficulty of doing it for the 2008 rate would
be at least difficult for just the workload of it in just how we get the information and deal with it by November in order to separate. There are a lot of practical difficulties with that.

In terms of future kinds of things, one of the problems is also just how you deal with exactly the information, what information do we have, how do we make sure it's accurate for the different employers, you identify the correct employer. I'm not sure it's going to fully address the situation you want if and -- because you're talking about a hypothetical where an employer, basically, the only way it's going to have its own experience is if it joins a PEO during the time frame. So if it joins a PEO -- it's a separate established employer in 2006, joins a PEO in 2007, and you're saying ideally for 2008 and at least for 2009, I believe you're saying that we should use the PEO's 2006 experience. In 2007, the experience is going to be lost. It's going to be merged in with the PEO, I believe, under that hypothetical. I just want to make sure I'm understanding what you're suggesting.

MR. JOHNSON: I guess what I'm suggesting is obviously for client employers that have more recently joined PEO's, you've got a lot more full data than one that may have joined three and a half years ago or you may
have one year of data on them and then they're assumed by the PEO. But at least you've -- so to answer your question, what I'm saying is whenever you have history that is relevant to the experience rating formula which, I think, is, what, you look at four years? Is it four years of data? So anytime you've got actual hard core data, historical, experience-rated data that's relevant in that four-year period, as we do this transition, you use it. When you don't have the data, then you're using the methodology you have here which is you're assuming the PEO rates so I guess you'd blend the two. And then the client company is building their own history from January 1, 2008, forward.

The timing issue, I understand the timing stuff. And maybe it's resource-wise impossible to get it all done by January 1, but there are provisions in the law for recalculating tax rates once in a given year. And so it could be done next July 1st, for example, which gives a lot more time for the Department to take a look.

And I'm thinking companies that join PEO's right now -- for example, Pam brought this to my attention at the end of the last UIEC meeting, if I'm in Rate Class 40 and I join a PEO right now, come January, if this WAC goes in the way it is, I'm assuming the PEO rate which may be at 2.5. Well, that's a pretty sweet deal. And the problem
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is -- or the opportunity for us is we have four years of
data on that employer right now. And so for folks like
that, I think they ought to get assigned their historical
rate just like the legislation proposes. There are other
reasons why hopefully they joined the PEO and bought the
services.

MR. RAFFAELL: Well, the effect of that is, to me,
about the same as the successor relationship, a
merger-type of thing. I assume that they're going to get
the rate. To me, it's a transfer of experience which is
parallel to or congruent to the successor relationship we
have when we buy a business, whether it's the whole
business or part of the business. And I would presume
that if you're doing that, the big question is: Are you
merging their experience together? Because it's resulting
in a lower tax rate. The accountability that you have
with a regular relationship where an employer or a new
business forms to buy another business -- it could be an
existing business -- generally, we transfer that
experience. And you would think that that would affect
the tax rate of the PEO if they're bringing in a higher
rate or we're going to end up with socialized cost again.

MR. WANG: Conceptually, this does follow the concept
of how we deal with granters and things. So conceptually,
yes, it applies the same kind of principle there.
MR. RAFFAELL: So I guess the downside of it, Jeff, I think you may be thinking of is if you're already in a PEO and they have a 2.5 rate and then they acquire an employer that has a 4.5 rate or higher, their rate could go up to 3 percent, depending on how large they are. So there's some factors there and it goes back to the education. If that's the case, if I was an employer that was going to use a PEO, I would be interested in knowing what my potential liabilities are and how they can fluctuate.

MR. JOHNSON: And I guess what I'm getting at, Norm, is that since we're doing a transition here where in the not too distant future PEO's will carry a rate but it will only be for their employees that they actually employ versus client employers that will carry their historical rates, and the rates are going to be different. There's not going to be any blending anymore that goes on. So when I say that to us, it makes sense for any client employer ESD has history on to use it, we think the system wins and individual employers win. Because if I'm an employer in Rate Class 1 or 2 and I join a PEO today, come next January, if this WAC goes in the way it is, I'm going to be paying taxes based on the history of the PEO rather than my Rate Class 1 or 2 tax rate. That's not particularly fair to me.

Similarly, if I'm at 5.4 in a Rate Class 40, I'm
going to be paying a lower tax rate come January rather than my historical rate.

So if ESD has the data, use it. I mean, we accomplish the transition much more quickly if we use the data we have than playing a blending game. That's the whole point.

MR. RAFFAELL: I think the way sometimes our systems are set up is that it's called "buyer beware" where everybody is expected to know what the law is. And it makes attorneys richer, I think. No pun to you, Pam. But what information, if any, are you giving employers as to these types of gratification? What is your potential certainly about the financial liability where you share it? But these are other little steps that are popping up.

I think this is a good discussion regarding that.

MS. CRONE: I think Norm does make a good point, again, about that information and notice piece just in terms of thinking about this transition period. And this is really complex. And people -- client employers will be making business decisions as to whether they want to go with a PEO, and, I suppose, those who are currently with a PEO, whether they want to remain. And it really does reinforce, I think, what we said earlier about the education and notice piece.

I would just echo what Jeff said. We have this
system that is based on experience and experience of the
given employer. And recognizing that there is a
transition occurring, it just seems to us that it would be
cleaner to remain as consistent as we possibly can be with
that experience principle.

MR. RAFFAELL: These creative ideas that are coming
into my mind right here -- this is good stimulation. But
I think one of the primary selling points of a PEO -- and
this is my perception -- is they are able to provide for
smaller employers in a group and get benefits for their
employees. And so the unemployment tax that we're
concerned with here is small to them.

And if I were a PEO, I would feel that I need to
properly disclose here's what we have -- and you have to
do this in real estate -- here's what we have and here's
what's going to happen if you join and let them know what
can happen to your tax rates. Most employers, I think,
look at unemployment as a small dollar picture when
they're dealing with the total concept of why they want to
use a PEO. And so I would think some of the things that
we're talking about, hopefully, a PEO would feel liable --
not necessarily liable, but obligated to disclose to a
client.

MR. JOHNSON: Those are the only comments on this
section. Otherwise, I thought it was written really well.
And other than we don't have to go through this, maybe it's something I could do with you all on the side, but I don't understand your example at all. That may just be me. Everyone else may get it.

MS. McALEENAN: I'm glad to hear you say that. I didn't understand it either so that makes me feel better.

MR. WANG: Let me try to walk you through it, make sure I understand it.

MR. RAFFAELL: Where are you going to start?

MR. JOHNSON: This is page 4. It says "comment."

MR. WANG: So from this standpoint, what we're doing is we're in effect assuming a transition -- a transfer occurs as of January 1, 2008. So because a transfer occurs on January 1, 2008, then you maintain the same rate for 2008, which in this case would be the PEO rate because they're part of the PEO up until January 1, 2008. So that's the basis for the 2008.

MR. JOHNSON: So I'm a client employer. It says "it's own 2008 experience."

MR. WANG: That's for 2009 that you're looking at now.

So first of all, everybody gets the PEO rate -- their PEO rate for 2008 under this rule or under this system. Then for 2009, what would happen -- and I was trying to illustrate two different things here and that's probably...
partly what's confusing you -- one is the concept of how you divide up -- well, let's ignore the 2 percent stuff here. Let's assume the PEO only has one client employer. So it's just a straight PEO has one client employer. Then what you would have for 2009, you would look at the client employer's own 2008 experience because it would have its own experience, at least for part of the year. You're not going to have the full year, but part of the year when we're setting the rate for 2009. Since we're assuming the PEO may have the one client, you would have all of the PEO's rate for 2007, all of the rate for 2006, all of the rate for 2005. So those four years would be blended together in terms of the experience used there.

Now, what might have been confusing here is that I also tried to illustrate the 2-percent concept here. And what we did there was simply saying since typically a PEO does not have one single client employer, let's assume that this particular client employer had 2 percent of the PEO's business. And so rather than trying to break things out the other way, the way we would do it is simply to say, Okay, we're going to take 2 percent -- since the client had 2 percent of the employer's -- was 2 percent of the PEO's business, we'll simply take 2 percent of the PEO's experience for 2007 and assign it to the client and similarly for 2006.
MR. JOHNSON: That's interesting because I thought you were just going to take the rate. I mean, the PEO has -- they may have 50 client employers but they have one tax rate. So I thought you were just going to take the tax rate and apply it to each one of the employers. So let's say the PEO rate is 2 1/2 percent, so it would be a 2 1/2 percent tax rate in 2005, 2006, 2007, assuming it stays the same, plus your own experience for 2008.

MR. WANG: As a practical matter, there's not much difference in it because what you're doing is whether you're looking at the actual experience, the actual experience is basically a ratio of benefits paid to payroll which puts you into a rate class which drives the percentage of your rate -- the rate percentage. And so you were looking at a sample of what's the rate percentage in blending those. I think technically what we do is blend not the rate percentage but blend the experience which is, again, that ratio. But they drive the same thing. So it doesn't make a whole lot of difference in practice.

MR. JOHNSON: It would be nice to see a simple -- I stress "simple" -- mathematical example showing it by using rates versus the experience. I'm this close to confusing myself totally. Keep that in mind. But what I'm thinking here is if it's a share of experience that
you're basing the individual employer on, what if I'm one of 50 employers that belongs to Jim's PEO but I happen to be a fairly large one and, coincidentally, I'm typically in a Rate Class 3? We just don't have turnover. We're that good of a place to work for. So is there a possibility that I'm going to end of paying more than I should through that method versus just applying the tax rate that the PEO has, the single tax rate? I don't know the answer to that, but a simple example that you all could work up could help me sort through it. I don't know if it would be helpful for anyone else.

MR. RAFFAELL: The way I look at it, it is pretty simple. I think what's probably confusing you is when they're saying 2 percent, generally, when we transfer businesses, they'll take 2 percent of the experience which is four years of charges and four years of taxable payroll. That gives you a benefit ratio and that determines what your tax rate is. When you take 2 percent, you're taking 2 percent of the benefits and 2 percent of the taxable payroll and you're transferring those dollars. And the calculation remains the same because their relationship percentage-wise is the same. So you have the same benefit ratio. And that's basically all that we're doing. We're just taking 2 percent. Some states, for example, when you transfer
experience, they'll say -- but in this case, I could see
where you'd want to do that for better control -- they'll
say unless you acquire 90 percent of the businesses, it's
not a transferable item or 10 percent or more. Because
they don't want to deal with -- we have people in some
states, one person doing marketing. And when we sell or
buy a business that has that, we've got one payroll person
and that's their taxable wage base. It's their taxable
payroll, $7,000. And we may have $10 million in payroll
total. And so it's an infinite amount. In that case,
most states would just say, That's not a transfer. They
get the new employer rate. It's very simple to save you
guys having to go through a bunch of headache and detail
calculations. But when they do talk -- at least this is
my perception of what happens when you're talking about 2
percent of the experience, it's just 2 percent of the
taxable payroll total for that four years and 2 percent of
the charges. And whatever that is, you transfer them and
then you divide again, it's the same ratio. What they're
basically saying is they're going to get the same rate.

MR. JOHNSON: I still think a simple mathematical
example would be helpful using hundreds of dollars or
thousands and not --

MR. RAFFAELL: Even numbers.

MR. JOHNSON: Even numbers. That's right. That
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1 would be helpful. Because it was a bit confusing.
2 But anyway, that's the example. The substance of the
3 comment remains. We still think if you've got history,
4 you ought to use it. And if you don't, then this
5 methodology works fine. More likely than not, it will be
6 a combination of both: this methodology plus history
7 average to give a truer rate.
8 MR. WANG: Just to follow up on that example, one
9 last point there.
10 MR. HALSTROM: Quit while you're ahead, Art.
11 MR. WANG: But nevertheless, just to explain the PEO
12 part, the PEO gets whatever is left. Just to make sure
13 people understand that.
14 MR. JOHNSON: Now that I understand the first, I get
15 the second.
16 MR. HALSTROM: Jim, when I looked at that, I just
17 threw it aside and said, "That's not for me to
18 understand."
19 MR. WANG: Other comments from anybody?
20 MR. RAFFAELL: I think I would like to echo what Pam
21 said, or it might have been you, Jeff, that you guys did a
22 nice job putting this together. That's not an easy thing
23 to wordsmith.
24 MR. WANG: Thank you very much. We had a lot of
25 input from a lot of people going through different parts
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Susan and Rhonda, do you have any other comments?

MS. WHITLOCK: Not at this time.

MR. RAFFAELL: Just so you know, we're putting our umbrellas out now.

MR. WANG: What state are you in?

MS. WHITLOCK: We're in Missouri.

MR. WANG: Well, if nobody else has any other comments, then we'll simply break at this point.

Norm, did you want to come back this afternoon to talk about other things or do you want to talk about it now? What's your preference?

MR. RAFFAELL: I think I may come back. The other items are, I think, important. I've got some things I can do here.

MR. JOHNSON: So you don't want to just move through them all then?

MR. WANG: I want to give you the opportunity to do that also. Norm had come in earlier and was confused about the timing of it. So I just wanted to check with him on that.

But if you folks want to comment on the other ones now too, you're welcome to do that. If you want to wait and do it this afternoon when we got the other general tax and other parts scheduled, that would also be appropriate.
What's your preference?

Mr. Johnson: Well, we should probably do it now which is easy for me to say because in about 20 minutes I have to head to Seattle.

Mr. Halstrom: I'm going to leave. But for what it's worth, I'm going to make this information available to them and my people with NAPEO and expect them to be able to respond to the extent they should to the issues that have been raised. They almost look like more issues -- your issues than ours.

Mr. Wang: We've also just been joined by a couple people. So let me just make sure -- before we move on to other subjects, let me make sure that we get these covered. Are you here on the PEO part?

Ms. Madison: Yes.

Mr. Wang: Let me get you folks to sign in there, if I may. We were just about to conclude on the PEO part, so if there are things that you would like to add at this point, your comments would be welcome.

Do you want to introduce yourselves for the record?

Ms. Madison: I'm Maria Madison with Landis and Associates.

Ms. Almanza: And I'm Michelle Almanza, also with Landis.

Mr. Wang: Could you spell your last name for us?
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2       MR. WANG:  I realize you just walked in, but do you
3  have comments on the PEO's that you would like to make on
4  the PEO rules?
5       MS. MADISON:  We were just wanting to show up today
6  to make sure we were clear on what the new rule was going
7  to be.
8       MR. WANG:  Because we were just finishing with that
9  part of it -- just finishing with PEO's.
10       MS. MADISON:  I think mainly because at Landis, what
11  we do is we manage a lot of the unemployment claims for
12  our clients.  We don't really do anything with the taxes
13  or the reporting -- required reporting to the state.  And
14  that's why we're here, just to clarify about the new
15  requirements and how that applies to third-party
16  administrators.
17       MR. WANG:  I'm sorry, you're asking a question then?
18  I'm not quite sure what you were asking here.
19       MS. MADISON:  We're not asking a question.  We're
20  just here observing and make sure that we're following the
21  right procedures.
22       MR. WANG:  Well, if there are no other comments
23  dealing with PEO's -- I'm just trying to finish up the PEO
24  part first before we move onto another subject here.  If
25  there are no other comments on PEO's, then we will go on
and allow you folks the chance to speak about the other subjects.

Rhonda and Susan, did you want to stay on or did you want to leave at this point?

MS. WHITLOCK: I believe we'll leave at this point.

MR. WANG: Let me just turn things over to Pam and Jeff for whatever comments you want to make on the other portions of the rules not dealing with PEO's.

MS. CRONE: Our only comments on the general tax issues has to do with the information being provided to, in this case, the employers who have contracted with third-party representatives. So we're looking at page -- so it's the new section, WAC 192-300-010, and then looking on page 2 of the general tax issue document. And looking at the last sentence there, Provision (1), "The department will send a letter to the employer confirming that the employer has authorized the employer representative to represent it before the department." And then there's a statement about continuing liability. And we would just like this to be consistent with what we're asking for in the PEO section in terms of the notices being -- the notices either being sent to the employer or some kind of opt in or opt out on that initial -- on the power of attorney form that is provided to that employer. We think that the same arguments around wanting to educate the
employer as to what's happening goes for this particular contractual relationship between an employer and a third-party representative as well.

MR. WANG: Now, in drafting it, I think I tried to make it consistent between the two. So I appreciate your point about that.

MR. JOHNSON: That's the main point. And then the secondary point was in Sub (2), the language there and the language under the PEO section which is WAC 192-300-230(1), they're just ever so slightly different and we were kind of wondering why. And there may be a reason that I don't see, but you may want to make the language the same.

MR. WANG: I'm sorry. What was the site on the --

MR. JOHNSON: PEO?

MR. WANG: Yes.

MR. JOHNSON: It was page 4 at the bottom of the page, Sub (1). There you have taxes interest or penalties due versus in the general tax you have registering, filing reports or paying unemployment taxes.

MR. WANG: Why is the language different? Good question. I think I drew that primarily from statutory concepts in terms of taxes, interest or penalties due is a fairly standard statutory language or in other rules. And I think in the case of the employer rep, I think I was
looking at a different source of things. But there's no real reason. I'll have to take another look at that.

MR. JOHNSON: It just struck us as curious. And if it makes sense to make them the same, then we point that out to you.

But Pam's some point was the main one, again, trying to give the client employer when they sign on to a third-party administrator or a PEO access to information on substantive changes, to us, seems to be a reasonable thing to do.

MS. CRONE: Is there a statement on the power of attorney form regarding the reliability of that client employer? I'm using the PEO term but I'm also talking about clients who contract with third-party administrator.

MS. WILL: Art, I don't believe there is a notice. You're inquiring if there's a notice -- a reminder that the ultimate liability lies with the client as opposed to the PEO or the third-party administrator?

MS. CRONE: Yes.

MR. WANG: I don't recall that there is. I don't believe so, but I'm not positive about that.

MS. CRONE: That might be a good thing. And if you do contemplate making some changes to the form anyway and providing this opportunity to employers to continue to receive this information, that would certainly be a good
supporting statement.

MR. RAFFAELL: Well, there's two types that I see -- actually, three types. There's a PEO but there's also a company like ADP that just does payroll. They're getting into doing unemployment as well. But then there's a company that just does the unemployment claim handling. And in that case, the liability doesn't get transferred to that company at all. If they screw up, that employer's rate could be affected by it. So we do have some different situations.

So I guess the power of attorney could be a little different for each one. And are you using a standard form that you supply or does the client -- the employer send in a power of attorney?

MR. WANG: Well, we're actually in the process of changing that because we developed a new form for use with the PEO's. We needed a new form specific for the PEO's at the time that the first aspects of the law went into effect. And so we used that for PEO's. We are in the process making -- we plan to adapt the POA form -- power of attorney form that we use for everybody else to make it similar. In the past, we've had -- for example, we've not allowed it to come in electronically and some other things, which have been a nuisance for employers, and have tried to make it -- so we're trying to make it a little Excel Court Reporting (253) 536-5824
bit easier for everybody involved. So we are in the
process of, I believe, reworking that form, but we haven't
really -- I don't think we've -- we're going to wait until
these rules came out and then I think make it consistent
with these rules. So that is something we could look at.

Just off the top of my head, I'm not sure it makes
sense to get into having a whole bunch of different forms
for power of attorney. We would want to just keep it
simple and try to do one form as much as possible. The
form we have been using has caused a lot of questions and
confusion from some of the PEO's so we'll take another
look at it.

MR. RAFFAELL: You would think that the power of
attorney would be specific as to what the power of
attorney governs.

MR. WANG: I'm sorry. Be specific as to what?

MR. RAFFAELL: As to what it applies to. This is
what they have the power of attorney to do, this portion
of our business.

MR. WANG: And it does give employers that option in
terms of it has a number of check marks of how the
employer can do things.

Other comments? Jeff or Pam, did you have other
comments on any of the other areas that you wanted to
cover?
MR. JOHNSON: That was actually it.

I was looking at the transfer of ownership piece and I thought that was brilliantly written. It's really truly the clearest rules I've ever read from ESD. I didn't mean that as a slight. I mean, it's understandable and rulemaking by many agencies are not. I didn't see anything here. And I thought the examples were very good. I didn't find any substantive issues here.

Norm, did you see anything when you read through this?

MR. RAFFAELL: Nothing that I'm forthcoming about.

MR. WANG: Anybody else have any comments on anything at this point? If not, then I guess what we'll do is end this part and we'll continue at 1:00 to deal with whoever comes in to talk about the general tax issues at that point.

MR. RAFFAELL: I guess I do have one question. On the very last one, page 7 of the transfer of business, it goes to the merit of proof and PEO's as an administrative role. You might want to come up with some examples, if you can. But it just says, "What penalties apply if there is intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions?" And how do you know that other than if the Department determines that there was intent to knowingly evade successorship?
And I don't know if you're talking about having a hearing over this issue at some point and making it an adjudication issue where employers are saying, "No, no, this is not true." I'm assuming you prohibited them from going through with it, but that they would have some sort of appeal rights or an adjudication process. I don't know if your intent is to allow that or not.

MR. WANG: I think that the appeal rights are covered elsewhere in terms of just make sure there are always appeal rights for determination under this, that if the Department were to determine that, yes, you knowingly violated this, then there would be appealed rights just inherently. Because we would have to do this in the form of an order. The order apparently has appeal rights to it.

If you're looking for a definition of "knowingly," it's actually above in the previous section here. Does that respond to your question?

MR. RAFFAELL: Yes.


Okay. We'll adjourn at this point and we will break until 1:00 then.

(Recess taken.)
MR. WANG: Let's go ahead and get started here. This is the public meeting to discuss tax rules. And some of you heard this same blurb this morning, but I'm going to go through it again anyway. My name is Art Wang. I will be facilitating this meeting.

This is the second public meeting we have done on tax rules here. The purpose of it is to receive comments and discuss the draft rules that have been presented to people. On the table -- I think everybody has signed in -- there are also copies of the rules. The particular ones we want to focus on in this session are the blue ones which are corporate officers and the white ones on general tax issues. We dealt with PEO's this morning and we've got the transfer of business, the green one, scheduled for later on today. If you want to comment on any of them, we'll take your comments.

There is also an agenda there on the table.

What we did was to follow-up the 2007 Legislature. They had a number of pieces of legislation dealing with unemployment and Employment Security. We broke that into five packages of rulemaking. This is dealing with three
of those. This general tax side of things is dealing with
three of those and, in turn, we broke out the general one
into the corporate officers and the general tax issues.
So there are four packets of rules here. We will
reintegrate the corporate officers back into the tax
issues when we actually publish the rules.

Introductions

MR. WANG: We do have a court reporter here, Cheryl
Smith. So I would like you to go around the room and just
introduce yourself and who you represent and spell your
name if there's any doubt.

MR. JOHNSON: Mark Johnson with the Washington Retail
Association.

MS. WILL: Jill Will with the Employment Security
Department.

MS. LEONARD: Jean Leonard with the Washington State
Arts Alliance.

MS. LANE: Karen Zeller Lane, Washington State Arts
Alliance.

MS. McALEENAN: Mellani McAleenan, the Association of
Washington Business.

MR. SMITH: Christopher Smith, UI policy.

MS. MADISON: Maria Madison with Landis and
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1  Associates.
2
3       MS. ALMANZA: Michelle Almanza with Landis also.
4       MS. CRONE: Pamela Crone with Washington State Labor
5       Council.

6                      Rulemaking Process

7
8       MR. WANG: The process today is that we will go
9  through and just receive any comments and things that
10  people want to say.
11      As I mentioned, we did have a meeting the first time
12  around to look at an outline of issues. June 26th was the
13  first public meeting. We received testimony and then also
14  written comments at that time. Lisa Marsh, Jill Will and
15  I met with a number of stakeholders also and just several
16  groups of stakeholders to get feedback from them too.
17  Based on all that input, we put together the draft rules
18  and released those on September 7th. So they've been on
19  our web site and sent by e-mail to people who have
20  indicated interest in them. They are still in draft form,
21  but we do need input now and we need to have any written
22  comments no later than the end of this week.
23  We intend to file the formal proposed rules with the
24  code revisor probably on October 3rd. And, frankly, it's
25  hard to change the rules significantly after that. So we
need to -- even though there will be an official public
hearing after that, as a practical matter, it's hard to
change them after that, at least significantly.

Around November 1st we anticipate emergency rules
dealing with PEO's on their rates. Those will be
necessary because of the timing required to calculate 2008
rates.

In late November we would file the CR-103 with the
code revisor which announces the adoption of the final
rules. And then we're anticipating these rules will take
effect January 1st.

Public Comments & Discussion on General Tax Issues

MR. WANG: Let me just throw out a couple of issues
-- or one issue in particular that has not been focused on
here, but if people want to comment on it during the
course of this section, and that is dealing with corporate
officers. There has been a lot of concern about the
registration requirements for corporate officers stemming
from ESSB 5373, Section 1. And so there are rules which
deal with that in terms of the registration of them. But
if people have comments or concerns about how we should be
doing corporate officers, let me just raise that as an
issue that people may want to comment on.
MR. JOHNSON: It has come to our attention that maybe unintentionally the law is pulling in volunteer board of director members for corporations. And we think that maybe that rule can be written as such to clarify that volunteer nonpaid board of directors do not have to submit to Section 1(2)(a) of the legislation that was passed and adopted. So we're seeking that clarification in there. I don't think that was the intent of the law and it would be nice to clarify that a little bit in rule maybe.

MS. McALEENAN: We're finding the same problem. I'm getting a lot of feedback on the form. One, exactly what Mark has said. And so if there is a way to clarify that you're talking about noncompensated, nonemployee volunteer boards who we call our secretaries and treasurers and things like that, if that's not your intent, that would be very helpful.

I'm also getting a lot of questions in terms of the definitions. Businesses don't understand what an "owner" means. I had, anecdotally, someone in ESD tell me that that was referring to a sole proprietor, but some people are reading it to mean all shareholders of a business. And the example is, of course, do you mean that every single owner of every single Boeing stock has to be accounted for, which would be an incredibly daunting task and not what we thought this Bill was for?
And then finally, the same definition question goes for "partners." I realize this is a little bit off the wall, but someone thought partners meant spouses so that you had to do spouses for every single person you turned in.

So if there is just a way that we can make it more clear what those terms of art mean, that would be very helpful, and also, who is defining an officer and how that is defined.

And then finally, just sort of a question in terms of process right now. What's going to happen if our employers either fail to turn in this form by the end of the month or if they turn it in incorrectly? I'm worried about that a little bit because there is so much confusion. What's going to happen if they do do it incorrectly? So I would hope that at least for this first go-round we could have a little bit of leeway in that.

MS. CRONE: In addition to working with the Washington State Labor Council, I represent a number of other nonprofit clients. And there is this concern that was well articulated by Mark and then seconded by Mellani and would definitely hope that we could get this cleared up. Because it certainly doesn't seem as if the intent of the legislation was to cover nonprofit, uncompensated board members within the meaning of this legislation.
MR. WANG: I'm going to respond to some of the concerns raised here. Mark, I think you referred to volunteer unpaid board of directors. And let's distinguish, first of all, between corporate officers and board of directors because I think clearly the intent of it is to apply to corporate officers. And we'll get into the question of who's a corporate officer. But nevertheless, it is not intended to apply to other members of the board of directors.

The question of the owner, the partner and so forth, unfortunately, we tend to use the shorthand and it often appears in statute and we quote from statute or paraphrase it from statute which often refers to owners, partners, members or corporate officers. And, in effect, it is shorthand for owners of sole proprietorships, partners of partnerships, members of limited liability companies and corporate officers of corporations. But unfortunately, we don't always spell out that detail. And so people see owners, members and corporate officers and think that owners might mean shareholders and so forth. And certainly, it's not intended to be that.

In the letter that went out, it's kind of referring to -- I could see how it would be confusing. It does refer to owners. And I don't remember if we use partners or members -- it uses all of them. And it doesn't say...
that you have to list them, but it says this is in
reference to a new requirement for owners, partners and --
owners, partners, members and corporate officers,
something like that. So I could see how it fairly could
be confusing.

MR. JOHNSON: Did someone bring a copy of that
notification? Because I thought somebody said it says
"spouse" on there.

MR. WANG: It does say "spouse" for certain purposes.
So there are some provisions for spouse in there as well.
So it does deal with the spouse of a corporate officer who
is -- and I don't remember the details of it, but it does
deal with the spouse of a corporate officer -- no, spouse
of a director. I'm getting confused.

MS. McALEENAN: Is it just the spouse of a sole
proprietor?

MS. WILL: I think it's for eligibility purposes.

MS. McALEENAN: I do think that part is a little bit
confusing too because I have had a couple of questions in
regards to who is the spouse -- who has to report spousal
information. So if there's a way to make it clear that it
applies in this case or not in that case --

MR. WANG: The question about the definition of
"corporate officer," I think on its face, the statute
applies to -- it just says "corporate officers." And it's
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1 hard to justify saying -- well, if it says we're supposed
2 to register corporate officers, how do you distinguish
3 between the nonprofit corporate officers versus the profit
4 corporate officers? So there's at least a question about
5 to what extent we can do that by rule or interpretation or
6 whatever.

7 There's also been confusion about public corporations
8 and whether public corporations are covered. One of the
9 easiest ways we could do things is simply to say that for
10 purposes of this, a corporate officer is as defined for a
11 for-profit corporation. And there's a specific statute
12 that says, basically, a for-profit corporate officer is
13 whoever is determined to be a corporate officer in the
14 bylaws. And there's also a definition for a nonprofit
15 corporation officer which basically says president, vice
16 president, secretary and treasurer. So that would be one
17 way in which we could simply say that a corporate officer
18 is these two statutes.

19 That solves the public corporation kind of issue, but
20 it doesn't get to the issue of the volunteer -- who
21 volunteers with the -- who are nonprofit corporate
22 officers. And that's an issue which I'm kind of
23 struggling with in terms of how do you define that, how do
24 you deal with that. Because unfortunately, nonprofit
25 corporate officers can be paid or unpaid. There are
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1 statutes which specifically allow compensation for it and
2 then that gets into the whole slippery slope of just,
3 well, how is the corporate officer structured in terms of
4 are they employees, are they just getting some sort of
5 modest per diem, are they getting larger per diems that
6 make them employees. And it just gets you into a quagmire
7 in terms of doing things there.
8 So what would you suggest? What are your thoughts on
9 how to deal with that?
10 MS. McALEENAN: I have two comments. I have not
11 consulted with my own AWB so I retain the right to
12 withdraw this comment later if it gets me in trouble, but
13 I'm wondering two things: one, depending -- if you could
14 define those employee versus nonemployee. I have no idea,
15 but I don't believe we compensate any of our volunteers.
16 If we do, maybe the idea is can it be incorporated into
17 similar to how the arts thing is with the 600. And I
18 don't know if the statute is written in a way that we can
19 incorporate more than just the arts specifically or if it
20 could be broader than that.
21 But I think for our -- just taking AWB as an example,
22 all the volunteer members of our board are employees of
23 someplace else. They are not AWB employees. And I don't
24 think that this statute was intended to draw in
25 nonemployees. So I understand the level of compensation,
but maybe there's something that just simplifies that a little bit.

MR. WANG: Is AWB a nonprofit corporation?

MS. McALEENAN: Not to my knowledge. I've never asked.

MS. LEONARD: I don't believe that any board members of AWB receive any compensation.

MS. McALEENAN: But it's actually never come up so I don't know. I don't think so.

MR. WANG: But is Don Brunell as president --

MS. McALEENAN: Don Brunell is an employee of the corporation and he is president of AWB. I think the confusion comes in -- probably it's our own fault of how we label people more than it is the actual law itself.

But then when we start talking about, well, how -- we have bylaws even though we're a nonprofit -- how do we define those people? I don't know what our bylaws say, but that could potentially get us in trouble with this law. So it might be something that we have to fix.

But I think the question of employee versus nonemployee, it's something that it seems shouldn't be that difficult.

MR. JOHNSON: I'm looking at the proposed rules, the very top of "new section." "What happens if I do not respond to request for information about my corporate
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officer status?" Well, it's pretty clear. It says that
if you do not, it will be presumed you are not unemployed
as defined and benefits will be denied. So, I mean, if
you don't respond and you're not listed and I do send in
something saying, "I'm now an employee and I want
benefits," it'll be instantly denied, correct?

MR. WANG: Unfortunately, this is a rule that was
taken from -- it really is borrowed from another
rulemaking, except they asked us to put it in here. This
is dealing with the -- portions dealing with the whole
issue of -- it's the section that Juanita is dealing
with --

MS. CRONE: The claimant fraud?

MR. WANG: The claimant fraud stuff, yes. But it
applies to corporate officers. So she said, "Well, why
don't you stick it in here?" So that's why it's here.
And it really has nothing to do with this subject. It was
not intended to have anything to do with this subject.

MR. JOHNSON: But could it have something to do with
the -- I mean, it sounds pretty simple to me. I mean, if
you don't send in the form like Mellani is mentioning and
it doesn't have all of her volunteer secretary, treasurer,
whatever else you have listed down, just the President Don
Brunell who's actually a paid person that would qualify
for unemployment benefits, if he's the only one listed,
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he's the only one who's going to qualify when somebody submits a form -- submits a claim for unemployment insurance. And if I, the volunteer treasurer Mark Johnson, send in an unemployment insurance claim for AWB as the treasurer for AWB and I'm a volunteer, you're going to send it back, don't see you on the form. Sorry, you don't get anything. You're out of luck. Try with your business that you actually do work with. It sounds pretty cut and dry. If you're not on the form, you don't get anything.

I mean, you know, and all the people that work for my association are in the same kind of situation there. They all have jobs with companies. And if they ever were to be let go or laid off, they would apply for benefits through one of their companies, not through our association. They just wouldn't even -- it wouldn't even cross their mind. And they're just going, "Oh, do we have to submit our stuff?"

And I go, "I don't think so."

MS. McALEENAN: What about the question, Art, if in this initial go-round, what happens to the employer if they fill out this form wrong this go-round? I will admit, I haven't read this whole thing yet. I apologize. But is it in here? Did I miss it?

MR. WANG: No. There isn't anything specifically
about that. But I think what we're planning to do, my understanding is that they were -- they've been setting aside -- they've been going through the forms that have come in and setting aside those where there are questions or holes and stuff and we're going to follow-up with those and just try and get more information from those and do a follow-up on those.

MS. CRONE: Art, did this notice go out to every corporation, not-for-profit, for-profit registered with the Secretary of State?

MR. WANG: Yes, it did, basically. It went out to something like close to 100,000 -- 98,000 corporations.

MS. CRONE: Because that world is sure in a dither over this. I'm wondering -- you know, it's done. It's happened now.

MR. WANG: No. Unfortunately, yes, it sure went out to 98,000 people. I appreciate your comments and suggestions on that. I don't think we've made an internal decision on how to proceed on things, but we certainly are hearing lots of comments about it.

Karen, you look like you were about to say something.

MS. LANE: I actually run a nonprofit theater in Puget Sound and my own business manager sent out a call to our board of directors this morning trying to collect
MR. WANG: At this point, she still does. At this point, this interpretation has been they are corporate officers, they still do. I don't mean to say that -- we're just considering how whether we should change it or not. At this point, no, it clearly is saying "all corporate officers," because the law says that all corporate officers must register and must provide this information.

MS. CRONE: I'm confused. Didn't you say board of directors?

MS. LANE: Yes.

MR. WANG: No. It does not apply to the board as a whole, just to those board members who would be corporate officers.

MS. LANE: She doesn't know that. So obviously, the notice that all these nonprofits got is not clear. And they're all going to be trying to collect data that they may or may not have.

MS. CRONE: I have a similar e-mail with a whole-
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with this concern and talking about trying to get this
information from the boards of directors.

MS. LANE: It's just ironic because I actually hadn't
seen this and I didn't know what the e-mail I got was all
about. Now I do.

MS. McALEENAN: I do want to say, though, too, that I
haven't been shy about forwarding people on to Joel or
somebody else to say, "Here. Can you talk to this guy?"
And I think ESD has been really good about helping to
follow up with some of our members that have been
confused. So I do appreciate that.

MR. WANG: Thank you. I think I'm a corporate
officer -- I was trying to think if I'm a corporate
officer of a nonprofit. And they wouldn't have my Social
Security number.

MS. McALEENAN: And they don't want to give it.

MR. JOHNSON: Just a question of clarification. I
notice that under the WAC, it says "corporate officer is
defined," but it's scratched out. So is "corporate
officer" defined somewhere that I'm missing? Can someone
point that out to me? See how there's a line through (b)?

MR. WANG: Yes. That part is replaced in the next
one down. It's moved to another place, basically, into
192-310-150. And so it's defined under --

MR. JOHNSON: 23B.08.400?
MR. WANG: Yes. And basically, that's the one which says -- 23B is for-profit only. And that's the one that basically says in a for-profit corporation it means whoever the bylaws say.

And so that actually raises another question. This provision now is dealing with the whole concept of whether corporate officers should be covered or not for unemployment insurance. Should that be limited to for-profits or should it extend to nonprofits as well? There is some ambiguity in the statute as it's written, unfortunately.

MR. JOHNSON: The intent of the law, as I remember from session, is that we're trying to go after corporate officers that are not paying into the system but collecting benefits. And they shouldn't be. So we're trying to capture that group of individuals. I don't know how big of a problem it is, but, I mean, with at least the organizations I'm working within, there's no intention for these nonpaid individuals ever to collect any benefits. That's not part of the deal. But apparently, there are other corporations that that's part of their system. Their function is they're nonpaid, but eventually, they quit being a corporate officer and they quit the association and they go out and they collect unemployment insurance benefits, right? Is that what this is trying to
MR. WANG: In part, yes. I'm not sure that your example is quite entirely accurate on that.

MR. JOHNSON: People aren't paying in, they're taking money out of the system, right? You're trying to stop them. And to me, if you're not getting paid, you're not paying anything into the system, you shouldn't get anything back, right? And this is trying to keep track of the folks -- this is trying to get a database or a collection of the folks that could potentially "game" the system.

MR. WANG: Yes. Because this part is not dealing with the registration provision. This part is dealing with the question of who's covered and not covered. This is for the part that takes effect in 2009 dealing with who's exempt from -- whether you're covered or not covered for unemployment purposes as a corporate officer.

MS. LEONARD: I'm just curious as to how many people in that kind of a position on a board, as am I, would think that they were entitled to unemployment compensation.

MR. JOHNSON: Do you think you are?

MS. LEONARD: No.

MS. WILL: We need to work this through a little bit because you are qualified for eligibility for unemployment
benefits based upon the hours you worked. So if you are not reporting any hours worked, you are not eligible for coverage. I mean, if you don't work 680 hours, you're not going to be covered by UI. So perhaps we can clarify--

the problem is that there are, in fact, corporations that have corporate officers that do receive compensation that don't pay into the system that then seek to collect benefits. So I understand what everybody's saying, but some of it is a little bit more straightforward than we're making it out to be, I believe.

MS. McALEENAN: But it's 680 hours total, not per employer. So if they worked elsewhere, they'd still be entitled to UI, not necessarily -- I'd assume that they're no longer an employee of that employer.

MS. WILL: But nonpaid volunteer work is not considered employment, it's not reportable employment.

They're not going to be reflected on wage reports, there's going to be no benefits charged to the employer's experience account.

MS. McALEENAN: That actually just feeds right back into my argument that I don't think that we should be asking for that information. I think we should be making it clear that in that situation -- it's what I've been calling the nonemployee -- that you don't ask for that information at all.
MR. WANG: In typical situations, clearly, where you've got a nonprofit corporate officer who is doing things on a strictly volunteer basis and there's no compensation at all, which is probably the norm, it's not going to apply. It's not an issue. The person's not exempt from -- it doesn't matter whether the person is exempt or nonexempt for unemployment purposes because the person then never qualifies for it.

MS. McALEENAN: I'm probably making a mountain out of a molehill because we all work for associations. In the real world, it's probably not that big of a deal.

MS. WILL: But I do understand that even though they're not eligible for benefits, the way the statute is written makes it appear that they have a reporting requirement whether or not they are eligible for benefits. And that's what we need to clarify.

MR. WANG: There are two separate issues here. One is the reporting issue, the registration issue which is due now. That's in effect now. And then there's the other issue which is where that definition comes in which is dealing with 2009 and the exemption in 2009.

Other comments or issues? Let me just throw it open for anything else.

MS. McALEENAN: Can I ask a question? Going back to the way we were just talking about our corporate officers
covered for UI, should it be for-profit only or nonprofit?
Does that get into the question of reimbursable employers?
Or what is the reason that we would distinguish between
the two in the first place? Because it never occurred to
me that we would be distinguishing between the two.

MR. WANG: Some of the legal -- well, the statute
refers to 23B.08.400, which is the one side here, which is
for-profits only. The statute also refers to an exception
for reimbursable employers and for Indian tribes who are
also functioning as reimbursable employers. Because it's
referring to the reimbursable employers, some of whom are
nonprofits and some of whom are not -- or not all
nonprofits are reimbursable. It raises the issue of:
Okay, does that mean some nonprofits are included here or
not? So that's part of the ambiguity in the statute as it
was enacted.

MS. McALEENAN: So I would agree with Mark that I
don't think the intent was to exclude them in the first
place. But this wouldn't be the first time this Bill has
been accused of having bad drafting. That answers my
question. I hadn't thought about it so I don't know that
I have an opinion right now, but it seems to me as though
we didn't mean for that to be -- for them to not be
included.

MS. CRONE: No.
MS. McALEENAN: I don't think that was our intent.
MR. WANG: To not be included?
MS. McALEENAN: I don't think we meant to exclude nonprofits when we wrote this bill.
MS. CRONE: Right. I don't think so either.
Nonprofit reimbursable employers, those who are clearly covered by the Act, is that -- am I qualifying that correctly in the way that you were thinking?
MS. McALEENAN: Other than the people who were specifically excluded, I don't think we meant to.
MR. WANG: Wait a minute. You're saying that nonprofit corporate officers should routinely be covered for unemployment? Is that what you're saying?
MS. McALEENAN: Now you're getting me confused. I just meant that we didn't deliberately exclude nonprofits in our thought process in discussing this Bill. We never sat down and said, "Should this only apply to for-profits or should this apply to both?" It wasn't even a consideration which we would be excluding them.
Did I say that better? Because I'm confusing myself now.
MR. WANG: We had somebody else join us. I just want you to identify yourself for the record.
MS. EVANS: Amy Evans with Weyerhaeuser.
MR. WANG: How about other issues? What else do you
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1 want to raise on any of these?

2      MS. McALEENAN: On page 3 and also on page 5 it says
down toward the bottom, "The exemption is not effective
until filed with the department and will not be applied
retroactively, except for the period from January 1 to the
notice is sent by January 15." Is there a word missing?

7 I know what we're talking about, but I'm not reading it
there. And it says -- it's on page 5 as well.

9      MR. WANG: I don't think there's a word missing.

10 What I was trying to get at was simply on the one hand,
this statute says, "This shall not be applied
retroactively." On the other hand, it says, "You can
apply up to January 15." Well, January 15 is
retroactively to January 1st. So what we're trying to do
is to marry those and say, Well, if you apply January
15th, we're not going to be retroactive. If you apply
January 15th, even though it says it's not retroactive,
we'll consider that as not retroactive. So that's what
I'm trying to get at.

20      MS. McALEENAN: And I understand that completely.

21 It's just the sentence that confuses. It's the phrase
after the comma, "...except for the period from January 1
to the notice is sent by January 15." If it makes sense
to everybody else, I'm perfectly willing to withdraw my
concern. But I just can't make it make sense.
MR. WANG: It has been confusing to others. I've not figured out a way to make it more clear to say that, well, this is meant to be retro -- this is retroactive but not retroactive.

MS. LEONARD: Could you say "...except for the period from January 1st to January 15th if the notice is sent by January 15th"?

MR. WANG: I'll play with it.

MS. WILL: That would do it right there.

MR. WANG: Say that again.

MS. LEONARD: "...except for the period from January 1st to January 15th if the notice is sent by January 15th." Because that would be retroactive in that 15-day time period only, right? You're just talking about that --

MS. McALEENAN: Just that two-week period. I think that would be helpful.

And then I just have one more question and then I'm going to be quiet for a while. On page 5, number (3)(a), "The window of opportunity to reinstate coverage only exists every five years, beginning in 2014." Why did we put 2014 rather than, say, 2013? It's more of a question than anything else.

MR. WANG: Because that part of the statute doesn't take effect until '09.
MS. McALEENAN: That's what I assumed.

MR. WANG: Other issues and things? Most people are dealing with corporate officers, the blue sheet at this point. Anything else? I really do appreciate your suggestions on this, so please, feel free. Any other issues?

MS. LEONARD: We're still on the blue sheet?

MR. WANG: On the blue sheet. If there's nothing else on the blue sheet, let's go ahead with the white sheet then.

MS. LEONARD: We would like to thank the Department, first of all, for helping over the last couple of years to get the Bill finally passed in several different versions that changed daily. And also with the rulemaking proposal, there were some confusing terms in the underlying statute which, I think, you've done your best to clarify. And we appreciate that. I don't know if Karen has any questions about some of the language or not, but we definitely appreciate working with you to try and get this to make some sense so that our organizations can comply.

MR. WANG: And just to be specific, what you're referring to is page 9, WAC 192-310-080.

MS. LEONARD: Yes. That would be it.

MS. WILL: And Art and I have, as you said, done our
best to clarify the intent on this. I have to say that
I'm trying to nail down one last loose end on legislative
intent on this to make sure that we have captured what was
coming out of the legislature on that. I think we're
okay, but I just need to circle around one more time on
that, the issues on the -- what we have discussed
regarding the counting of the three individuals.

MS. LEONARD: And if you'll let us know if we can
help at all, we've lived with this for quite some time.

MS. LANE: I do have a question on page 9 there. So
I am understanding that it states if they employ no more
than three individuals who regularly exceed half-time,
they will be presumed to meet the test for this exemption.
If they employ a fourth individual for any day during a
calendar year, then going forward, the exemption is
nullified. And my question, though, is if they still have
no more than three individuals who regularly exceed
half-time does that trump the fourth individual who may
have been employed for two days?

MR. WANG: Good question. I need to take another
look at that.

MS. LANE: My wishes on that, I would hope that they
still are at the place where they have no more than three
exceeding half-time trumps that.

MS. WILL: I understand what you're saying, but that
would seem to me to go beyond the legislative intent. 
Because there was the three person that was in there, and 
if we say, "Three but not," and I'm not sure that that's 
doable.

MS. LANE: I totally understand what you're saying.
Is there anything that can be mitigated with the period of 
time of employment or the number of hours of that fourth 
individual? You don't have to answer that. I'm just 
curious.

MS. LEONARD: And Jill, we'll keep struggling with 
you with that because you know all the testimony was based 
on the types of organizations who are smaller and don't 
have full-time staff people running the organization on a 
routine basis. So that's where we're all trying to get to 
the same place and we'll just keep working with you to the 
best of our ability. We definitely appreciate these 
efforts.

MS. LANE: To repeat, I think you did a wonderful job 
with the rules with what you had to work with. I really 
do.

How would it be tracked that this does appear to be 
something that starts over with the calendar year? Does 
the organization themselves just track and they know that 
it starts over so it's just a matter of being clear with 
them?
MS. WILL: Yes. I think it's going to be a matter of taxpayer education. And however we can assist your organization to do that, how we could do appropriate outreach, we'd appreciate your suggestions on that.

MR. WANG: Do these organizations typically have some individuals who are paid and who are -- so that they already have to file for at least some individuals? I realize that they don't want to file for all the artists, but do they typically have at least some individuals?

MS. LANE: One or two.

MR. WANG: So they are already registered with the Department, they are already doing things for those one or two people?

MS. LANE: Correct.

MR. WANG: Anybody else? Any other concerns about this on the white pages, "general."

MS. McALEENAN: If we could go back to what we were talking about earlier in regard to the definitions of owner, member, partners, etc., if there's just a place where we can stick definitions on page 2 of the master business application section, that might be helpful.

MR. WANG: Actually, it didn't define it. But under the master business application at the bottom of page 2, you'll notice what it does say is, "Owners of unincorporated businesses, partners, members of limited
liability corporations or corporate officers." It's a little bit better, but not fully. That would be the place where if we are going to make any changes to it, we can try and change it and would add either the definitions that I mentioned on both the for-profit and the nonprofit or else however we want to structure it. But you're right, that's the place to do the clarification.

MS. McALEENAN: And then on pages 4 and 5, when we're talking about what is significant in terms of incomplete or incorrect format, the word "element" I'm struggling with. I understand what you mean and I understand that record -- it sounds like you mean the whole thing and you mean pieces of the thing. But I'm just -- I'm not comfortable with "elements," but I can't really tell you what word makes me more comfortable.

Don't you love it when you get suggestions but no suggestions on how to fix it?

MS. WILL: But the element is clarified in the parens, though. The elements that we are referring to is the Social Security number, the name, the hours worked or the wages.

MS. McALEENAN: I'm missing it. Where are you reading that?

MR. WANG: Up on Subsection (2)(a)(ii).

MS. McALEENAN: Okay. I can live with that. Thank you.
MR. WANG: On the reporting hours worked, and basically this is -- which is the 192-310-040, most of this is largely cosmetic in terms of just doing the changes there. One of the things that I did not include which came up afterwards is just how to deal with piecework, people who are paid by piecework. And it seems to me that it's covered under commissioned employees, but you don't find it because if you look at the term "commissioned employees," then it doesn't sound to me like piecework. But I think it's, in effect, the same thing. I was thinking about just adding in that commission and piecework -- commission includes piecework. Does that raise any concerns or is that okay?

MR. JOHNSON: Wouldn't that mostly apply to agricultural workers, piecework?

MR. WANG: Not necessarily.

MR. JOHNSON: For example --

MR. WANG: Garment industry, for example. I mean, actually, lots of places. Number of papers processed or something of that sort. And this is simply for reporting -- simply a question that came up, how are you supposed to report hours for piecework? Fumbling around looking for the rules for it, I couldn't find it. I think it is covered under commission, but I think it would help if we...
articulate it better.

Surely you've got other comments. Somebody has got to have other comments.

MS. WILL: Perhaps your drafting was so splendid that no other comments are required.

MS. McALEENAN: Was the domestic violence not in the rule before? Because that's not a new law. I'm on page 15. Didn't we pass that law two years ago? Is it now just getting into the rulemaking?

MS. CRONE: No. They've already done some rulemaking. There's been rulemaking.

MR. WANG: This is for the relief of benefit charges. And so it's not in something that was addressed by the rulemaking and things before. It's just an additional area where it seemed like it should apply.

MS. CRONE: The rulemaking was in the benefit provisions.

MR. ALMANZA: Is Item B up above, the claimant's domestic responsibilities, new as well?

MR. WANG: No.

MS. ALMANZA: What is that, domestic responsibilities?

MS. WILL: I'm sorry. Which one are you looking at?

MS. ALMANZA: It's on page 15, Section (2)(b).

MR. WANG: I don't remember, frankly, offhand. I
assume it relates back to the statute and I would have to
go back and check this to figure out exactly what that is.
I'll take another look at that.

MS. ALMANZA: And then in the next section under
relief of charges as well as voluntary quits not
attributable to the employer, Letter (h), other
work-related factors the commissioner considers pertinent,
is that meant to --

MR. WANG: I'm sorry. Where are you?

MS. ALMANZA: Page 16, Letter (h) in the top section.
Is the intent there to be subjective?

MR. WANG: Again, that's current law or current
rules. It's simply changing the "may deem" to
"considers."

And I think, frankly, that had been suggested a
couple years back and was one of these old rules just to
improve the -- make it more consistent for cosmetic
reasons and was not intended to be substantive here. In
some cases, I just picked up those changes that had been
suggested and just never got them through the process
before.

Anything else?

MS. ALMANZA: Page 16, 192-330-100(3)(c), I presume
the commissioner is the one that determines if a business
can prove financial hardship. Is there anywhere where
that states the guidelines that sort of outline what
that --

MR. WANG: The definition of financial hardship?
MR. ALMANZA: Right.

MR. WANG: No. I don't believe there is a specific
definition of "financial hardship." Do you think there
needs to be?

MS. ALMANZA: Well, we deal with a lot of really
small businesses. And financial hardship to a really
small company is a lot different than Boeing.

MR. WANG: And I think we would apply the standards
differently clearly for a small company as opposed to
Boeing. But this issue is simply: When do you provide
for an actual refund as opposed to when do you provide for
a credit to be used against future taxes? We've got some
timing issues in terms of just that it may take us longer
to process a refund.

MS. ALMANZA: Because prior to this, wasn't it at the
discretion of the employer, if it wanted a refund, they
could request a refund or if they wanted to credit, they
could request that?

MR. WANG: I don't think we had an actual policy on
it. It certainly was not in the rules.

MS. ALMANZA: Because that's our experience. And now
there are rules, so I'm just trying to get clarification.
MR. WANG: So your experience was just that if you requested a refund, you would get a refund?

MS. ALMANZA: Uh-huh.

MR. WANG: Is this language acceptable? Do you have any concerns about it? Does this cause problems at all?

MS. ALMANZA: Well, I don't know. Just going back to proving financial hardship and what that entails, with small businesses, a lot of them that we represent, financial hardship is immediate. And if you're saying it could take a long time to process a refund check, then obviously, that's not going to help them this quarter whereas a credit to their taxes, that's fine, it will come down the road. Possibly a difficult -- I don't know. I just want to see -- I'm not requesting that it be changed, I just wondered if there was clarification somewhere.

MR. WANG: No. I don't think we have established anything on financial hardships specifically.

Even though this is the subject for later on today, if people want to also comment, if you do have any comments on the green one, on the transfer of business, you're also welcome to make those comments too. I don't want to -- if you're still going over the white one, that's fine.

MS. McALEENAN: Did Boeing submit any comments on the transfer of business section?
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MR. WANG: No. Not in response to this. I did get some -- prior to the draft rules coming out, I did get some from Boeing, but I've not had any since. And I asked him to take a look at it, but I have not heard anything back.

MS. McALEENAN: It's kind of a little mini passion of his, so I want to make sure that Ray is -- I'm sure he's aware it's going on.

MR. WANG: I think it was at the UIAC meeting when I gave this out. I think I mentioned to him to take a look at that.

MS. McALEENAN: Thanks.

MR. WANG: If you're looking at the green one on the transfer of business, one thing you might want to look at also is the provision for SUTA dumping in the next to the last section on page 6 and 7. This goes into what happens with how do you define what is significant purposes for getting a lower tax rate. And it does establish a presumption where the Department can establish presumption if the transfer was to lower the actual tax rate by at least 1 percent and at least $10,000 per year. And then once you establish the presumption, it becomes up to the business to say, "No, there were other legitimate business reasons for doing it. It wasn't just for SUTA dumping purposes." So that is new. I just wanted to alert people
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to that.

MS. CRONE: It's silent on the burden. I assume it would then just be a preponderance then, again, to rebut the presumption on the part of the business?

MR. WANG: Yes. Do you think I need to specify the burden on that?

MS. CRONE: I made that assumption. I think you probably can because the burden is set out earlier. But it certainly wouldn't hurt to do that, I don't think.

MS. McALEENAN: "Preponderance" is a pretty low standard. So I have a little bit of concern about then switching the burden of proof onto the employer. I think I need to get it processed a little bit more and get back to you on that. But at this particular moment, I'm a little uncomfortable with it.

MS. CRONE: Isn't that different, though, than what Art articulated the presumption was? The presumption -- what was the presumption? Instead of the $10,000, where was it?

MR. WANG: In the preceding. (2)(c).

MS. CRONE: I see right here. So it's all of those. They'd have to establish by a preponderance. And then there is a presumption that SUTA dumping only in a certain circumstance, right, and then that presumption can be rebutted?
MR. WANG: Correct.

MS. CRONE: So the preponderance, it wouldn't be preponderance for preponderance except for this particular piece of it where there's a presumption; is that right?

MR. WANG: Well, except I think Mellani is saying that the preponderance is a low enough state to get the -- to establish the presumption.

MS. CRONE: Got it.

MR. WANG: So that's, I think, her concern.

The dilemma that I'm trying to resolve here is just how do you find the situation? It's so difficult to prove otherwise that I tried to say, Okay, what's a reasonable amount in trying to do both a percentage so that there would be a significant difference in unemployment tax rates so that -- and arbitrarily, frankly, put 1 percent just as some sort of a significant difference there. And then plus it's got to be more than a minimal amount of dollars because it could be a very small employer who's doing things and you don't want to -- and even if it's a 1-percent or even if it's a 3-percent difference, if it's only $500, you probably are not going to go through a corporate restructuring just for $500. So I just tried to establish some threshold in terms of dollars.

MR. JOHNSON: And that's where you came up with the $10,000, right?
MR. WANG: Yes. Are those reasonable figures?

MS. McALEENAN: I think that's what I need to ask. I don't have an answer to that.

MR. WANG: Actually, as I'm looking at it, Pam, your concern about what is required to rebut the presumption is in here by a preponderance of the evidence. So that is actually explicit in there.

MR. JOHNSON: Where is that? I'm just looking for it.

MR. WANG: At page 7, Sub (3).

MS. McALEENAN: Given that you only have to prove SUTA dumping by a preponderance, I'm just wondering why we need a rebuttable presumption in there at all. It's a low threshold you have to meet in the first place, and then you're going through the extra hassle and now the burden shifts, but you only have to rebut that by a preponderance. I'm just wondering if it's even necessary.

MR. WANG: The problem is the Department still has to prove significant purpose. And how do we prove significant purpose? And so what I tried to do was just to come up with a presumption that if these circumstances exist, then you can at least presume that there is a significant purpose. Because otherwise, it just becomes so difficult to prove significant purpose on the part of the employer going through the corporate merger for the
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1 purpose of SUTA dumping.

2 MS. McALEENAN: That's already a lower standard,
3 though, than the one that's in the model code that this
4 was based on. But we lowered the threshold already and
5 now we're adding a rebuttable presumption.

6 MR. WANG: I didn't realize that you lowered the
7 threshold in doing this.

8 MS. McALEENAN: When the Bill was passed a couple
9 years ago, we had an enormous amount of debate over the
10 word "significant" versus "substantial."

11 MR. WANG: Is that what you mean by lowering the
12 threshold --

13 MS. McALEENAN: Yes.

14 MR. WANG: -- in the significant versus substantial?

15 Is that what you mean?

16 MS. McALEENAN: Right. I think that in the Bill that
17 we passed, we already -- significant is already lower than
18 a substantial purpose, which is what was the question of
19 debate when the Bill was passed. And now we're asking
20 essentially to lower the standard even further by allowing
21 the Department a greater latitude than we were comfortable
22 with in the first place.

23 MS. WILL: I guess I'm not clear, Mellani, what
24 standard you'd be looking for.

25 MS. McALEENAN: Well, and perhaps I'm using words
interchangeably that I shouldn't be because I'm making it confusing.

When the Bill passed or when it was subject to debate a couple of years ago, the model code set a substantial purpose. And we deviated from that because people thought that that was too hard to prove. So we, in effect, lowered it by saying you don't have to prove a substantial purpose, you have to prove a significant purpose. And now you're taking it one step further by saying not only do you have to prove a lower purpose or an easier purpose, but we're also going to have to rebut that a presumption of certain things are met. And I'm concerned that we're taking it too many steps away from where the business community was comfortable in the first place.

MS. WILL: Then do you have a suggestion for what -- for an alternative definition of significant?

MS. McALEENAN: It's not the definition of significant that I'm so concerned with. It's the shifting of the burden. I mean, because you can say -- there's a difference in my mind between saying, "A significant purpose must be more than incidental and can be any of these things," without saying, "And if it is these things, the burden then shifts to the employer to prove the negative."

MR. WANG: The problem that I'm trying to deal with
is how can we establish there's significant purpose unless 
there's something in the corporate minutes that say, "We 
are doing this in order to get a lower tax rate"? How 
else can we establish it, that a significant purpose of 
the transaction was to do that?

MS. McALEENAN: I think -- again, I think that you 
can have evidence that amounts to a total of being a 
significant purpose without actually having a written 
record of it. But I don't think it's fair, though, to ask 
the employer to say, "Well, we have to now prove that 
that's not why" -- I mean, if it's in the records and it 
specifically says, "We're doing this solely for the 
purpose of getting a lower tax rate," that's pretty clear. 
But then you've made your case. You don't need a 
rebuttable presumption.

But you can get to that point with a preponderance of 
the evidence without shifting the burden of proof back 
onto the employer. Essentially, you're asking the 
employer to prove a negative. It can be a benefit -- 
lowering your tax rate can be a benefit of reorganizing 
without being SUTA dumping, essentially. And it's the 
shifting of the burden that I really have a problem with, 
not the definition of what a significant purpose is. It's 
that extra step.

MS. CRONE: I guess I don't understand why that
wouldn't be a good thing, otherwise -- from an employer perspective. Because otherwise, you could establish on the need basis of (2)(a), (b) or (c) that you could meet your burden of the preponderance of the evidence and be finished. Am I reading this wrong? But by switching the burden, you're giving the employer an opportunity to bring forward a case then that says, "Well, it looks really bad."

MS. McALEENAN: They are going to be able to provide a defense regardless. What I'm saying is I don't think that the Department should be entitled to presume anything based on the evidence. Certainly, all of these things can amount to what a significant purpose is, but I think it's up to the trier of facts, using the term really loosely, to make the decision, not an entitlement to presume and then have to have the business go back and defend themselves at a higher standard.

MS. CRONE: It would just seem to me in looking at (2)(a), (b) and (C) there, they do somewhat speak for themselves. And maybe that's not the part that you're disagreeing with. But the Department really would be entitled on the basis of any one of those to make a legal presumption as long as that presumption is rebuttable.

MS. McALEENAN: Well, certainly the fact that it's rebuttable is helpful. Let me put some more thought into
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1 it, Art, and I'll get back to you.

2 MR. WANG:  By the end of this week, please.

3 MS. McALEENAN:  No problem. It will probably be by
4 tomorrow, in fact.

5 MR. WANG:  Other parts either on this, the white one,
6 any of these things?

7 MS. LEONARD:  Art, back to the white one again. On
8 page 9 there's a Subsection (12). I don't know where it
9 came from or why it's here: practice, preparation and
10 rehearsal time. It has to do with reporting hours. And I
11 don't know that I have a problem with it, but I just don't
12 know how it got in here.

13 MR. WANG:  The reason for it is there was a specific
14 case that dealt with where this subject came up. There
15 was a case in which the Pacific Northwest Ballet reported
16 practice hours and the Seattle Symphony and the Seattle
17 Opera did not. And so what happened -- so it was a
18 question of whether the person had sufficient hours and it
19 was a question of just how do you interpret what hours are
20 required and how to report it. So it's just trying to
21 find a consistent pattern of what we should be telling
22 employers in terms of what are practice hours. So it did
23 it simply in terms of saying -- and the person was a
24 musician of some sort. I don't know what kind of
25 musician, but working for those three different employers.
And it was a question of, well, when she's on her own
rehearsing at home and stuff, that's one thing. But when
she's in a required rehearsal with the whole group, then
it seemed to me to make the most sense just to say, "Okay,
that should be reported, that kind of practice time where
it's required that you appear with the whole orchestra."
That makes sense to count that as -- even though it's
practice, it makes sense to count that as hours worked.
And it gets to the whole 680 hours to qualify.

MS. LEONARD: And I don't know what the common
practice is, but we'll take a look at it and let you know.
I don't know if we have a problem with it at all. I just
didn't know where it came from.

MS. WILL: And, again, because there's
inconsistencies with how the field has done this --

MS. LEONARD: In the arts?

MS. WILL: -- that it would be helpful if we can
figure out how to educate people as best as possible if
this change takes effect to help everybody. Because
obviously, if there's a musician working for multiple
organizations, he or she should have some clarity about
how many hours they have accrued toward being eligible.
We need to be consistent with the employers, but we also
need to be consistent with the employees as well.

MS. LEONARD: We'll look forward to working with you
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on all those message points back to the arts and interpret
all this when we send out information. Thank you.

MR. WANG: That's a good point. I'm glad you brought
that up. That's just one of those little specifics that
we ran into and thought, Okay, let's fix it here. It's
good to make sure people notice that and get comments
back.

MS. LANE: Same type of question for the white papers
here, page 10, the new section in the middle of the page
there, the 192-310-095, when are musicians and
entertainers exempt from unemployment insurance. I don't
think that we have any kind of an issue with that at all.
I'm just curious where it came from.

MR. WANG: That's in our current status manual. And
it's one of those things, as I was going through -- I
tried to be systematic about going through our status
manual, looking and seeing what kind of things are in our
manuals that should be in rule form.
And so it really -- this is current practice and
current policy. I thought it really belonged in rule
form.

MS. MADISON: On reportable hours for the fishing
industry, what is the maximum allowed reported per day?
Usually when they're on the fishing vessel, they work 16
hours a day. So I'm wondering, what if they work 18 hours
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a day, can the employer report all 18 hours for that day or just 16? I didn't see it in this section, but I'm just curious about that.

Some employees, when they're on the fishing boat, they're out there for months at a time. And if they're working 16 hours a day, by the time they're out there working eight or nine weeks, they've already accumulated their 680 hours.

MR. WANG: And I don't know what the answer is in terms of -- I don't think -- since we don't have anything in --

MS. MADISON: I've had a couple calls from a few fishermen. They asked, "Well, I worked all these hours. How do I prove to them that I worked all these hours?"
But I think the issue they had was the employer could only report 16 hours even though they worked more.

MS. WILL: And the reason the employer could only report 16 was because --

MS. MADISON: I wasn't given a reason. That was just the response I received from the tax office in North Seattle.
But the employee was trying to file a claim, but he was not able to.

MS. WILL: Because he didn't have enough reported hours?
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MS. MADISON: Correct. Even though he worked more hours.

MR. WANG: And the reason he didn't have enough hours was because the employer was told to limit it to 16 hours per day?

MS. MADISON: Yes. So I was just curious as to why.

MR. WILL: That will be something we'll have to look into. We'll have to check on that.

MR. WANG: I vaguely recall something in our status manual about fishermen, but I don't recall whether it's the number of hours or what. I just vaguely recall some reference to fishermen in there, but it may have been a completely different issue about that.

MS. MADISON: Some days they work 12 hours, other days it depends on how much product is on the vessel and how fast they need to process it. Sometimes it is longer than 16 hours a day.

MR. WANG: I'll see if I can find an answer to that. I don't guarantee finding one, but I'll look.

Anything else?

Why don't we do this, because I'm sure our court reporter could use a break also, so let's just take ten minutes and just if people want to look at things, then we'll go back on the record after ten minutes and if you have other comments to add, we'll do it. If not, we'll

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1 just wait until 3:30 and reconvene then.

2                                (Whereupon, proceedings
3                                adjourned at 2:30 p.m.)

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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 2nd day of October, 2007, at Auburn, Washington.

Cheryl A. Smith, CCR, CVR
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16022-17th Avenue Court East
Tacoma, WA 98445

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