

Unemployment Insurance Rules Meeting, 9/23/10

1                                   EMPLOYMENT SECURITY DEPARTMENT

2                                   STATE OF WASHINGTON

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5                                   TRANSCRIPT OF PROCEEDINGS

6   of

7                                   UNEMPLOYMENT INSURANCE RULES HEARING

8   ADVISEMENT ORDER

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11   Date and Location

12   September 23, 2010           Employment Security Department  
    Thursday, 11:00 a.m.       Maple Leaf Conference Room  
  Page 1

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212 Maple Park

Olympia, Washington

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17 BE IT REMEMBERED, that a rules meeting was held on  
18 the date and location as set forth above. The Employment  
19 Security Department was represented by Pamela Ames, Rules  
20 Coordinator.

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20

Reported by:

21

Cheryl A. Smith, CCR, CVR

(License #3017)

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16022-17th Avenue Court East

Tacoma, WA 98445-3310

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(253) 536-5824

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PROCEEDINGS

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welcome and introductions

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MS. AMES: Pursuant to the authority given under

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washington State law, this hearing is hereby convened.

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For the record, this hearing is beginning at about 11:08

8

on September 23rd, and we're at 212 Maple Park Avenue,

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Olympia washington.

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This hearing is convened to consider testimony

11 concerning the rulemaking proposal to amend WAC  
12 192-04-175, the advisement order, to establish the  
13 circumstances under which an individual designated by the  
14 Commissioner may, as an interested party, direct the  
15 Commissioner's review office to take a decision issued by  
16 the Office of Administrative Hearings under advisement.  
17 Other changes to Chapter 192-04 WAC are made for purposes  
18 of clarity and ease of administration.

19 Notice of this hearing was published in the  
20 Washington State Register of September 1, 2010, as WSR  
21 10-17-118 and sent to interested parties.

22 My name is Pamela Ames. I am the rules coordinator  
23 for the Washington State Employment Security Department.  
24 I am representing Commissioner Karen Lee as hearing  
25 officer presiding at this public rulemaking hearing.

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1           we have everybody signed in. And I see that not all

2   the blanks are marked. Is that william?

3           MR. RUDNICK: william. Yes, it is.

4           MS. AMES: Were you going to support the proposal,

5   yes or no?

6           MR. RUDNICK: Was I here to support?

7           MS. AMES: Yeah. There's one additional line at the

8   bottom.

9           MR. RUDNICK: I'm sorry. I didn't see the one at the

10 bottom. No. We're not supporting the proposal, at  
11 least --

12 MS. AMES: Or with minor changes?

13 MR. RUDNICK: With changes, perhaps. And with the  
14 proposal you're speaking of, because there's two proposals  
15 here, the one that's being addressed at 11 o'clock?

16 MS. AMES: Uh-huh. Right.

17 This attendance log will be kept as a permanent  
18 record of the hearing.

19 There are Employment Security staff attending this  
20 hearing, and we'll have them introduce themselves.

21 MS. MYERS: Juanita Myers. I'm the rules coordinator  
22 for the unemployment insurance division.

23 MR. SHEAHAN: I'm Larry Sheahan from the U&I tax and  
24 wage legislative and legal process coordinator.

25 MR. RUDNICK: I'm William Rudnick, government

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1 relations manager for the TALX Corporation. We're a  
2 third-party administrator for unemployment benefits for  
3 employers.

4 MS. AMES: Thank you.

5 when the rule is adopted, a concise explanatory  
6 statement of the Agency's reason for adopting the rule,  
7 including a summary and response to all comments received,  
8 will be placed in the permanent rulemaking file, and

9 copies will be available upon request. Please see me or  
10 Juanita after the hearing should you desire to review any  
11 written submission received to date or receive a copy of  
12 the Agency's concise explanatory statement.

13

14 Discussion on Rules

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16 MS. AMES: Today we will begin with Juanita with a  
17 brief explanation of the proposal.

18 MS. MYERS: The Department is amending rules relating  
19 to the filing of petitions for review by the Commissioner  
20 of decisions issued by the Office of Administrative  
21 Hearings.

22 WAC 192-04-040 defines the term "interested party"  
23 and is amended for purposes of clarity only.

24 WAC 192-04-060 specifies the filing of appeals and

25 petitions for review and is amended for purposes of

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1 clarity only.

2 WAC 192-04-063 defines the term "aggrieved party" and

3 is revised to include the Department as an aggrieved party

4 when it receives an adverse decision by the Office of

5 Administrative Hearings.

6 192-04-175 specifies the conditions under which the

7 Commissioner may take an order issued by the Office of

8 Administrative Hearings under advisement. It provides  
9 that the Commissioner may designate one or more  
10 individuals employed by the Department to request an order  
11 of advisement under specific circumstances. The rule  
12 further specifies the actions that the Commissioner's  
13 review office will follow when taking an order under  
14 advisement.

15 And WAC 192-04-190 is amended solely to revise the  
16 mailing address for petitions for review.

17 The Department has determined that changes to other  
18 rules or statutes would not achieve the same regulatory  
19 objective. The language of the proposed rules has been  
20 shared with the US Department of Labor. There are no  
21 other state agencies that deal with the subject matter of  
22 these regulations. The Department has chosen a  
23 reasonable, cost-effective manner of achieving the

24 regulatory objective of the rules. There are no  
25 anticipated environmental consequences associated with the

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1 rules. There are no anticipated fiscal consequences  
2 associated with the rules. Specifying performance  
3 standards is not appropriate for the rules. The proposed  
4 regulations do not impose more than minor costs on  
5 business. Input was solicited from stakeholders during the  
6 development of the proposed regulations.

7 MS. AMES: Thank you, Juanita.

8 We will now hear testimony from those logged in in  
9 attendance concerning this proposal. And when you do  
10 speak, please state your name and who you represent so  
11 that we can have that recorded.

12 Do we have any testimony?

13 MR. RUDNICK: Yes. Thank you. My name is William  
14 Rudnick. I'm government relations manager for the TALX  
15 Corporation. TALX provides UI services to employers. We  
16 service over 5,250 active Washington UI accounts to date.

17 We do support changes that enhance and expedite  
18 unemployment insurance appeals proceedings for all  
19 involved. The proposal the Department has put forth,  
20 though, as far as the amendments to WAC 192-04-063 and  
21 192-04-175 we cannot support.

22 First, as far as 192-04-063 is unclear and we do not

23 see how the Department can place itself in a position as  
24 an aggrieved party as it would suffer no personal or  
25 property interest harm from a decision from the Office of

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1 Administrative Hearings. Only the employer and claimant  
2 can do such. The Department is an administrator of the UI  
3 Trust Fund and adjudicator for distribution of benefits  
4 and such; therefore, we believe that's an erroneous  
5 position to take for the Department.

6           As far as 192-04-175, the advisement order WAC has  
7 been in place for a number of years. During the  
8 commentary period the Department provided data and some  
9 look back to 2002 through, I believe, 2006 on advisement  
10 cases that were undertaken by the Commissioner's review  
11 board. We believe the data produced by the Department  
12 does not support in any way an amendment to the advisement  
13 order. It shows that this is used in a very minimal  
14 manner, and as far as overturns, I believe the Department  
15 -- I'm standing corrected if I'm wrong -- showed that  
16 there was only one case in those six years of look back  
17 that was overturned by the Commissioner's review office.

18           To go and to designate a commission, designate  
19 someone within the Department in this time and this era of  
20 economic distress when the Department itself is seeing  
21 unprecedented claims and unprecedented business or needs

22 for its resources doesn't make sense. I believe it was  
23 put forth that there was no anticipated fiscal cost here,  
24 but you're taking a person or persons away from a focus  
25 into processing claims, reducing benefits for the public

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1 good, taking care of the public good and focusing on an  
2 issue which is relatively small and innocuous at this  
3 point in time.

4 The other thing that we see that is a problem here is

5 that you're taking a department with a stellar performance  
6 record and pushing it closer to the slippery slope of  
7 possible finger-pointing and -- finger-pointing and blame  
8 for taking reviews -- potentially taking reviews of cases  
9 which neither have been -- have not been appealed by  
10 either party in standing, the employer or the claimant.  
11 And that doesn't seem to be a good position in which to  
12 place the Department.

13 we feel that the WAC 192-04-175, as it is in its  
14 present state, serves the public well, serves the  
15 employers well, and doesn't bear reason for this proposed  
16 change.

17 MS. AMES: Thank you.

18 Is there any further testimony concerning the  
19 proposed rulemaking before we conclude the hearing?

20 MR. RUDNICK: I have none from the TALX Corporation.

21 MS. AMES: Thank you.

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23 Conclusion

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25 MS. AMES: So this hearing was convened to consider

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1 the testimony concerning the rulemaking proposal to amend

2 WAC 192-04-175, advisement order, to establish the

3 circumstances under which an individual designated by the

4 Commissioner may, as an interested party, direct the  
5 Commissioner's review office to take a decision issued by  
6 the Office of Administrative Hearings under advisement.  
7 Other changes to Chapter 192-04 WAC are made for the  
8 purposes of clarity and ease of administration.

9 All oral testimony presented at this hearing and  
10 written submissions will become part of the official  
11 record. The deadline for submitting written comments was  
12 September 22, 2010.

13 A final decision regarding adoption of this proposed  
14 rulemaking will be made after all testimony and written  
15 comments have been considered with a target date of  
16 September 27, 2010.

17 On behalf of Commissioner Karen Lee, thank you for  
18 participating in this hearing. If there is no more  
19 testimony, this hearing is adjourned at 11:18 on

20 September 23rd.

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(whereupon, proceedings  
adjourned at 11:18 a.m.)

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