

Employment Security Department, 12/10/09

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EMPLOYMENT SECURITY DEPARTMENT

STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS

of

UNEMPLOYMENT INSURANCE RULES MEETING

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Date and Location

December 10, 2009	DSHS Region IV
Tuesday, 10:00 a.m.	Cascade Room
	400 Mercer Street
	Seattle, 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 Juanita Myers, Rules Coordinator, Alicia Cardenas-Short and Christopher Smith.

Reported by:  
Cheryl A. Smith, CCR, CVR  
(License #3017)

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1

PROCEEDINGS

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welcome and Introductions

4

5

MS. MYERS: My name, for those of you who haven't met me, is Juanita Myers. I am with the Employment Security Department, Unemployment Insurance Division, and I am the rules coordinator for the Unemployment Insurance Benefits.

9

with me from our staff today is Christopher Smith, who is in our policy unit; and Alicia Cardenas-Short. She is our communications consultant. And both of them are here because they are training to be backups for me.

10

11

12

13

And with us is Cheryl. She's our court reporter today. The meeting is going to be recorded and then transcribed, and the transcription of the meeting will be online if anybody wants to refer back to it.

17

18

19

20

Just a couple little ground rules or housekeeping first. The restrooms are to the left out this door and then left around the corner. In this room here there are vending machines with snacks, sodas and water.

21

22

23

24

25

I'm going to ask you to introduce yourselves, and if you would spell your last name for the court reporter. And when you speak, state your name again so she knows who is speaking and can record it for the minutes. And then also, I would ask that we not talk over one another so

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1 that she can go ahead and get the names and get a clear  
2 picture of what is being said.

3 And can I get you to sign in, sir?

4 Let's go ahead. And I'll start with you, if you  
5 would introduce yourself and spell your last.

6 MS. CROWDER: My name is Kristie Crowder,  
7 C-R-O-W-D-E-R. I work for K-Sea Transportation in the  
8 maritime industry.

9 MS. MADISON: I'm Maria Madison, and that's  
10 M-A-D-I-S-O-N. And I'm with Landis and Associates. I'm  
11 the employer representative.

12 MR. TURNER: My name is Ron Turner, T-U-R-N-E-R. And  
13 I'm with the carpenters union.

14 MR. MILICI: I'm Ken Milici. I'm with the carpenters  
15 union.

16 MS. MYERS: And can you spell your last name, please,  
17 sir.

18 MR. MILICI: M-I-L-I-C-I.

19

20 Discussion on Rules

21

22 MS. MYERS: Thank you.

23 You have in front of you a packet of information.

24 The first gray sheet is simply a list of the rules we are  
25 replacing. I sent out a summary, it's on the yellow

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1 paper, of the rules that we are proposing to discuss  
2 today, both the new sections and the amended sections.  
3 And you'll see quite a few of them that say "replaces WAC  
4 192-12." It starts with the fourth rule down on the first  
5 page. And you'll see quite a few of those.

6       What we are doing is trying to sort our rules into  
7 subject matter headings. Previously we had two chapters  
8 of rules: One said substantive rules and one said  
9 interpretive rules. And it was very difficult for people  
10 to find, for example, where would I find job separation  
11 information, where would I find the availability for work  
12 information and so on. So what we're doing is separating  
13 them into subject matter headings specifically called job  
14 separation, availability for work, reporting requirements,  
15 job-search requirements and so on. So when you see these  
16 that say replaces a WAC, what we're trying to do is we're  
17 repealing the old WAC and putting it into one of the new  
18 chapters that are sorted by subject matter heading.

19       As I said, I gave you a copy of the rules that are  
20 being replaced, it's on gray paper, just for your  
21 reference and for purposes of full disclosure.

22       The other thing we did, as we were replacing the  
23 rules, you'll see that they are not exactly the same.  
24 It's because we are trying to put them into active voice

25 and make them easier to read so they're not so

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1 bureaucratic since they're accessible by the general  
2 public so they can understand what we're saying.

3 MR. MILICI: Have these rules already been adopted  
4 and passed or are we going to make amendments here or  
5 recommendations for change?

6 MS. MYERS: We're going to make recommendations for  
7 change.

8 MR. MILICI: So it's open.

9 MS. MYERS: This is open.

10 And you weren't here earlier, but when you make a  
11 comment, could you say your name again just for the court  
12 reporter so she catches who is talking.

13 MR. MILICI: My name is Ken Milici. I'm with the  
14 carpenters union.

15 MS. MYERS: You don't have to say where you're from.  
16 Again, just state your name for the record.

17 what we're going to do is go through these rules and  
18 I want to take your comments on them. Let's start with  
19 the new sections first. And unless you have questions  
20 about them, I was going to skip over the rules that say  
21 they replace an existing rule just because there's not  
22 substantive differences. They're wording differences and  
23 they're moved to a new chapter.

24 MS. MADISON: You're requesting questions about the  
25 new?

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1 MS. MYERS: We're going to go through the new rules  
2 first and then we'll go through the amended rules.  
3 The new section is on this buff-colored paper. The  
4 first three rules on that page are just definitions of  
5 terms. There's a difference between, for example,  
6 disclosure and willful nondisclosure. If somebody doesn't  
7 disclose information to us by -- you know, it's  
8 inadvertently or it was an oversight, then it's not  
9 considered fraud but we can collect overpayments for up to  
10 two years following the year in which they made the  
11 incorrect statement.  
12 willful nondisclosure basically is similar to fraud.  
13 They willfully withheld information in order to obtain  
14 benefits, and we can collect on those at any time. We can  
15 go back and redetermine the decision and collect  
16 overpayments on those at any time.  
17 A labor dispute, there's a simple definition. It's a  
18 deliberate action by two or more individuals or by an  
19 employer that results in a strike or lockout. wages,  
20 hours, working conditions or terms of employment are at  
21 issue.  
22 we define preponderance of evidence. Basically, it

23 provides information that the evidence -- the proposal is  
24 more probably true than not.

25 The rule on the bottom is one of the replacement

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1 WAC's so I'm going to skip over that unless people have  
2 questions.

3 And the next new section is on the bottom of page 4.  
4 what the topic of that one is, can a claimant have an  
5 individual with power of attorney file an initial or  
6 weekly claim on their behalf. And the answer to that is  
7 no. The claimant has to individually certify that they  
8 are able to work, that they're available for work, that  
9 they meet the requirements of the law as far as qualifying  
10 for unemployment benefits. They can't have somebody do  
11 that for them. Somebody with a power of attorney can file  
12 an appeal on their behalf, but they can't testify in place  
13 of the claimant at a hearing. The claimant has to testify  
14 on their own behalf in order to meet the requirements of  
15 the statute.

16 Any questions on that one?

17 we're going to skip to -- again, the rest for the  
18 next few pages are simply replacement rules updating what  
19 we already had.

20 The next rule is on page 10. It's at the bottom of  
21 the page. what that says is if an individual quits work

22 because of a change in working conditions, that meets the  
23 requirements of a particular statute. Basically, what  
24 that statute lists is where the employer cut their hours  
25 by 25 percent or more, cut their wages by 25 percent or

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1 more, changed their working conditions so that they're  
2 unsafe, there are illegal activities, or that they violate  
3 the individual's sincere, religious or moral beliefs.

4 we're not going to deny benefits solely on the basis  
5 that they continued working for a short period of time  
6 following the change. A lot of people may try to continue  
7 working to try to work things out particularly with things  
8 like distance to work. They may try that to keep going  
9 for a period of time. And if they do that, we're not  
10 going to just deny their benefit on that basis. While we  
11 can't just -- we won't say, "Oh, you accepted the new  
12 change by continuing to work for a short period of time."  
13 That's not the intent of the statute to just deny. They  
14 don't have to quit immediately when the employer makes  
15 their change in their working conditions.

16 MR. TURNER: The brief period of time, is there a  
17 definition of that or is that open to interpretation?

18 MS. MYERS: Well, it's on the top of page 11. But it  
19 is fairly broad. Basically, what we look at is what  
20 amount of time would a reasonably prudent person continue

21 working after the change in circumstances. So it depends.  
22 It's fact specific, so we would look at the circumstances:  
23 what was changed, how long did the individual continue to  
24 work, what kind of conditions were they. For example, if  
25 they changed the work to work that violates somebody's

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1 sincere, religious or moral beliefs, how long did that  
2 individual continue working there under those  
3 circumstances, and would somebody, a reasonable person who  
4 held those same beliefs, continue working for that length  
5 of time. So we aren't putting it, it's 30 days, we're not  
6 putting in two weeks because it depends on individual  
7 circumstances.

8 MS. MADISON: Can we go back to page 9? I didn't  
9 hear that part. We wanted to comment on the new section  
10 you proposed, 192-140-140, of reasonable assurance. Does  
11 that only apply to educational?

12 MS. MYERS: Yes. That applies only to educational  
13 employees.

14 MS. MADISON: What about industries where they have  
15 nonstandard work schedules and they are guaranteed to come  
16 back to work?

17 MS. MYERS: That's not covered in these particular  
18 rules under the statute. The only people who are held to  
19 -- where we apply the reasonable assurance to go back to

20 work is educational employees and athletic employees.

21 MS. MADISON: Because the industry I'm referring to  
22 is -- what is your industry?

23 MS. CROWDER: Maritime.

24 MS. MADISON: Maritime. And you can explain how your  
25 schedules work.

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1 MS. CROWDER: We are a tug and barge company. Our  
2 vessel employees work 40 days on and 40 days off. So on  
3 their off time, they're compensated to the manner where --  
4 for the hardships for being away from their families for  
5 40 days at a time. So when they're off for 40 days, we  
6 don't want to have to pay them unemployment unless they  
7 are off more than 40 days, their regular schedule. So  
8 their schedule is set for 80 days at a time: 40 days  
9 aboard a vessel and 40 days off.

10 MS. MYERS: And you're continuing to pay them for the  
11 40 days off?

12 MS. CROWDER: No. They only get paid while they  
13 work. But because they are on a vessel for 40 days and  
14 the hardship of being away from their family, they are  
15 compensated to cover the 40 days off while they're working  
16 for 40 days.

17 MS. MYERS: The definition of unemployment is  
18 somebody who is performing -- in a given week is

19 performing no services and receiving no remuneration for  
20 those weeks of time. So that individual could qualify for  
21 unemployment benefits during those 40 days while they're  
22 off work.

23 MS. CROWDER: Even though it is part of their  
24 schedule?

25 MS. MYERS: Did you have a written agreement with

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1 them or a contract with them that says that is part of  
2 their working schedule?

3 MS. CROWDER: For the 40 days or for the 80 days?

4 MS. MYERS: For the 80 days.

5 MS. CROWDER: No. It's more of a verbal right now.

6 MS. MYERS: Why don't I get back to you on that.

7 MS. MADISON: On this topic also, the employees are  
8 still -- they receive company benefits even. When they're  
9 not working they would get medical, retirement plan  
10 eligibility, they accrue vacation.

11 MS. MYERS: Because there is an exception in the  
12 statute that says if somebody has an individual employment  
13 contract that -- that if somebody has an individual  
14 employment contract that defines their work as full-time,  
15 that they would not get unemployment benefits during their  
16 periods they're off work. For example, there are unusual  
17 circumstances where workers work seven days on and seven

18 days off but it's a part of their regular working  
19 schedule. And they wouldn't get unemployment benefits  
20 during that time. Yours may fall under the same  
21 circumstances.

22 MS. MADISON: We believe it's the same circumstances  
23 except theirs is 40 days.

24 MS. MYERS: Yours may fall under this exception, but  
25 I'll check and I'll get back to you on that.

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1 Back to page 11. We have a new rule in here that  
2 talks about examples of flagrant and wanton misconduct.  
3 If somebody commits an act for their employer -- not for  
4 their employer -- against their employer that constitutes  
5 either a criminal act or an act that is so flagrant and  
6 wanton that it displays a lack of respect or so on --  
7 violates standards of behavior that the employer has a  
8 right to expect of the individual, then in both cases,  
9 their behavior can result in canceling their wage credits  
10 for that particular employer so they would likely not be  
11 able to qualify for an unemployment claim.

12 The use of flagrant and wanton has come up on a  
13 number of occasions as to what exactly meets that  
14 definition. And what we have here are examples, and  
15 they're all taken from real cases, of what we have  
16 determined is flagrant and wanton behavior. They're

17 pretty extreme but we felt that -- because the only other  
18 way that benefits can be canceled is for criminal acts.  
19 And our position is that they should rise to that level,  
20 be equivalent to something that's a criminal act.

21 Next section at the bottom of page 11, what happens  
22 if the claimant is discharged prior to the date of the  
23 resignation. If the individual notifies their employer  
24 that they are resigning from their job and the employer  
25 let's them go prior to the end of the notice period, the

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1 separation is treated as a discharge. Benefits won't be  
2 denied unless the employer can show that they were  
3 discharged for misconduct. However, if the employer pays  
4 them through the notice period but requires no work, it's  
5 treated as a quit, and the separation date is the last day  
6 of the notice period. For example, if I say that I'm  
7 going to quit on December 31st and the employer sends me  
8 home and doesn't require any work of me but pays me until  
9 December 31st, then that's considered a quit -- a  
10 voluntary quit and we would have to determine whether the  
11 individual had good cause to quit work. So in both cases  
12 -- in these two cases, it depends on whether the employer  
13 pays them or does not.

14 MR. MILICI: Sometimes somebody will leave a job that  
15 has a very little life left in it in construction because

16 he has another opportunity to go somewhere where, let's  
17 just say, the pickings are a little bit better and the job  
18 has more life to it. And then he goes to the other job  
19 and he's laid off prematurely, you know. He leaves a job  
20 that's only got two weeks left and he goes to a job where  
21 it might be six months long and there's a layoff at four  
22 weeks. What happens then? He quit one job and then he  
23 went to work for four weeks.

24 MS. MYERS: One of the good-cause reasons for  
25 quitting work is for another bona fide offer of work. So

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1 that individual would not be denied for quitting the first  
2 job if they left -- if they quit one job to go to another  
3 job, that is considered quitting for a bona fide offer of  
4 work so there would be no denial on that basis.

5 MR. MILICI: Is there a time frame -- we have had  
6 some people that were denied unemployment benefits because  
7 there was some sort of time frame or weekly wages had to  
8 equate to seven months or seven weeks. There was some  
9 stipulation that said, "Oh, well, your new job didn't last  
10 as long as the other one."

11 MS. MYERS: That shouldn't happen.

12 MR. MILICI: That shouldn't.

13 MS. MYERS: That shouldn't happen.

14 MR. MILICI: If he quits for a good reason, to get a  
Page 15

15 better job and it doesn't work out --

16 MS. MYERS: Right. And I'll give you my card. And  
17 if you can give me some more information on who that  
18 specific individual --

19 MR. MILICI: It happened a while ago and I think it's  
20 a dead issue. And I think he's found employment. But  
21 there was a denial for this individual. He left one job  
22 that was running short, got another job. And the new job,  
23 it didn't last as long as he thought it would.

24 MS. MYERS: Let me clarify. They have to have  
25 another job already. So if they're quitting one job and

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1 then just going out to look for another job --

2 MR. MILICI: No. With a bona fide offer. They quit  
3 on a Friday, say, "This is going to be my last day. I'm  
4 giving notice. I'm going to be leaving to go to work for  
5 another company closer to my house," or whatever, they  
6 take that other job and it doesn't work out as they had  
7 thought. And they're not misleading anybody. He thought  
8 he was going to get six or seven months worth of work out  
9 of the deal, and he didn't get that. Maybe there was a  
10 month, maybe there was a snag, maybe weather conditions  
11 slowed things down and there would be a recall at a  
12 different date or he didn't perform as well as the  
13 employer would have hoped that he would have performed.

14 But he went there nonetheless thinking that it would be a  
15 good ride into the future and it just didn't work out.

16 MR. SMITH: He should have been paid. That should  
17 have been an allowance of benefits from one to another.

18 MS. MYERS: And if it happens again, like I said,  
19 I'll give you my card afterwards. You can call me.

20 MR. TURNER: Backing up a little bit on the flagrant  
21 and wanton misconduct, in the construction industry I can  
22 see where that might be an avenue for the employers to  
23 deny the benefit based on that. Because sometimes on  
24 projects, things do get built maybe wrong, and the  
25 employers might interpret that as flagrant on a guy and to

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1 try and deny his benefits. And I just kind of see that as  
2 maybe a loophole.

3 MS. MYERS: Essentially, it has to be intentional  
4 behavior.

5 MR. TURNER: Well, they can say it's intentional. In  
6 our industry, sometimes not all the information gets  
7 transferred to the employees. And a foreman can view  
8 that, you know, can take that as an open door to becoming  
9 flagrant and wanton misconduct.

10 MS. MYERS: Well, they can allege that, but the  
11 decision is with the Department. And so we would take  
12 both the statement from the employer and the employee.

13 And the burden of proof of showing misconduct and gross  
14 misconduct is on the employer rather than on the employee.  
15 And if the facts weigh equally, basically the employer  
16 says "yes" and the claimant says "no" and there's no  
17 supporting facts to show one way or the other, then we  
18 construe to the benefit of the claimant.

19 MR. TURNER: Because I just went through that issue  
20 with one of our members working on a school, and some  
21 stuff was built wrong. I believe he got bad information.  
22 But when I investigated, of course, the employee didn't  
23 write down every word that was said to him by the foreman,  
24 and the foreman wrote down in his notes saying this is  
25 what I told him to do. But I couldn't approve it. But

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1 based on the information that I got, I believe the member  
2 received some bad information from that foreman. And I  
3 believe if the employer had maybe a little bit of an ax to  
4 grind, that he was denied the benefits and say, "Hey, this  
5 guy flagrantly built this stuff wrong and we had to tear  
6 it apart." So I just see a little possibility of a  
7 loophole there, you know, for going after guys that maybe  
8 don't quite separate from the company on good terms.

9 MS. MYERS: And I said that's a possibility that an  
10 employer can allege that. But as I said, any decision to  
11 deny benefits is made by the Department, not by the

12 employer. And, in fact, when there's allegations of gross  
13 misconduct, those decisions are reviewed by the central  
14 office policies staff before we agree that they are gross  
15 misconduct simply because in cases of flagrant and wanton  
16 misbehavior, just because it's such a serious penalty  
17 having their wage credits canceled, they go through  
18 basically two reviews: the telecenter review of the agent  
19 making the decision and the central office review. And  
20 always, if there's a decision adverse to the claimant,  
21 they always have appeal rights. And we recommend that  
22 people who don't agree with the decision of the  
23 Department, that they file those appeals. Because they  
24 are held by a separate agency, and you have an opportunity  
25 to introduce new facts. And the claimant can bring any

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1 witnesses that he or she wants to the hearing including a  
2 union representative.

3 MR. TURNER: Thank you.

4 MS. MYERS: You're welcome.

5 Page 12, availability for work requirements. The  
6 individual is considered available for work if they're  
7 willing to accept full-time, part-time or temporary work  
8 during the usual hours and days of the week that are  
9 customary for their occupation. They're not required to  
10 be available for part-time or temporary work if it would

11 interfere with their return to their regular occupation.

12       The requirement to be available for full-time work  
13 does not apply under certain circumstances. We list those  
14 WAC's. But those are essentially for disabled people.  
15 They are only required to be available for work for the  
16 amount of hours that they can, that they are capable of  
17 working rather than necessarily full-time.

18       MS. CROWDER: So back to the whole 40 days on,  
19 40 days off, these gentlemen that are getting unemployment  
20 on their off time are not considered looking for full-time  
21 work because they are anticipating coming back to work for  
22 our company as soon as their 40 days are up, yet they are  
23 still being approved for their unemployment benefits.

24       MS. MYERS: Well, they can tell us that they are on  
25 standby. Now, the employer doesn't have to agree to that.

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1 But if they have a definite return-to-work date, you're  
2 kind of caught in a Catch-22 there if they're, in fact,  
3 eligible for benefits during that time, which I don't know  
4 yet. I'm going to follow up on.

5       MS. CROWDER: We generally have a five-day window  
6 from their crew-up date, so we ask that they be available  
7 either five -- we ask that they be available five days  
8 before and five days after because it determines where the  
9 boat is where we're able to crew them up at.

10 MS. MYERS: And a claimant, when they file an  
11 application for benefits, can request that they be on  
12 standby for up to four weeks -- which, excuse me. Yeah.  
13 For four weeks which would excuse them from the job-search  
14 requirements. Now, if it's longer than four weeks, which  
15 40 days would be approximately six weeks, the employer  
16 does not have to agree. But what you're doing then is  
17 saying that the individual has to go look for work. And I  
18 don't think you want to do that in that circumstance.

19 MS. CROWDER: I guess my question being is if they  
20 are collecting unemployment, it is a requirement that they  
21 are looking for full-time work, correct?

22 MS. MYERS: Unless they're on standby or there's a  
23 few other situations.

24 MS. CROWDER: But you said it was within four weeks,  
25 but they're off for six weeks. So I guess I'm just

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1 confused.

2 MS. MYERS: The claimant him or herself can request  
3 four weeks. If it's longer than four weeks, then the  
4 employer needs to request that. It can go up to eight  
5 weeks total. So if the employer wants them on standby for  
6 more than four weeks, then --

7 MS. CROWDER: We've never approved that or we've  
8 never been asked that in any of our cases.

9 MS. MYERS: When you get the notice to employer, on  
10 the back of the form it says is this individual on  
11 standby, and standby ends such-and-such a date. Isn't  
12 that correct, Chris? It's on the back of the notice to  
13 employer.

14 MR. SMITH: It's on the notice to employer. It'll  
15 ask them -- which is 30 days, whether they'll be returning  
16 to work within 30 days. And if they are returning to work  
17 within the 30 days, then we will grant them that standby.

18 MS. MADISON: The reason that we don't select the  
19 standby option is because they are fully employed and not  
20 separated from the job because they are receiving benefits  
21 and -- while they're -- even in their off time.

22 MR. SMITH: Are they compensated for that 40-day time  
23 frame they are off work?

24 MS. CROWDER: No. They only get paid while they're  
25 on the vessel.

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1 MR. SMITH: So is the money they get while they're on  
2 the vessel --

3 MS. CROWDER: It's pretty significant.

4 MR. SMITH: So that -- part of that money covers that  
5 40-day period off?

6 MS. CROWDER: Yes.

7 MR. SMITH: It's like additional compensation on top  
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8 of their regular pay.

9 MS. CROWDER: No. It's included in their base pay  
10 which is why they get paid between -- you know, depending  
11 on what you work, it can go from anywhere between \$350 to  
12 \$650 a day.

13 MR. SMITH: So do they have the option of taking that  
14 pay off and putting it onto that 40-day period?

15 MS. CROWDER: No. We used to do that before and it  
16 didn't work. What we reverted back -- plus we got bought  
17 out by another company, and their standard is 40 days on,  
18 40 days off. When you're aboard a vessel, you get paid.  
19 When you're not working, then you don't get paid. And  
20 that seems to work pretty much for the gentleman.

21 MS. MYERS: But that may fall under the exception as  
22 to whether they're fully employed just because they have  
23 an individual employment contract. There's no requirement  
24 that it be written, but it's usually easier if it's  
25 written. If they have a contract that says, I'm a

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1 full-time worker. I'll work -- recognizing I'll work 40  
2 days on, 40 days off, I'm compensated for the 40 days that  
3 I'm working sufficient to cover the 40 days off.

4 MS. CROWDER: Our offer letter does not necessarily  
5 state the 40 days on, 40 days off. But what it does state  
6 is that they are a full-time, exempt employee and not

7 eligible for overtime. So, I mean, again, I can't quote  
8 it verbatim, but it does say specifically that they are a  
9 full-time employee, that they are considered exempt  
10 because we have a nonstandard work week.

11 MS. MYERS: Can you take a business card for me when  
12 you leave and send me a copy of that letter? They're up  
13 here.

14 MS. CROWDER: Absolutely.

15 MS. MADISON: I have additional comments about the  
16 availability for work and how this applies to seasonal  
17 employees, specifically like the fishing industry. When  
18 they're off in between seasons I'm concerned about (a)(i).  
19 It says you're not required to be available for part-time  
20 or temporary work if it would substantially interfere with  
21 your return to your regular occupation.

22 MS. MYERS: Right. So they have to be available for  
23 full-time work. They can be available for part-time and  
24 temporary work.

25 what that is intending to say is, for example, if

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1 their job is -- I don't know. Give me an example, Chris.  
2 Their job is they're a teacher and they are between  
3 seasons or their job terminated so they're going to be  
4 looking for a full-time teaching job. They don't  
5 necessarily have to look for part-time and temporary work

6 because what their goal is is to get back into full-time  
7 teaching. They're not exempt from the job-search  
8 requirement. It simply says they don't have to look for  
9 part-time or temporary work. They still have to look for  
10 full-time work.

11 So between seasons, if you have somebody who's  
12 drawing unemployment benefits, they could look for  
13 part-time or temporary work, but they also have to look  
14 for full-time work. They can't limit themselves to  
15 part-time or temporary work. It's the opposite. They can  
16 limit -- they can exclude part-time or temporary if it  
17 would interfere with their ability to go back to full-time  
18 work. If it was something like agriculture, it's common  
19 to take temporary and part-time work. But other  
20 occupations, it's not.

21 MS. MADISON: And what about the ones -- the  
22 claimants who live out of the area in different areas and  
23 they're in the fishing industry and that's their only  
24 skill?

25 MS. MYERS: They'd still have to look for work if

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1 they're drawing unemployment. When you're drawing  
2 unemployment benefits, you have to look for full-time  
3 work. Whether you look for part-time work or temporary  
4 work depends on whether taking that would interfere with

5 your return to your full-time occupation, but you always  
6 have to look for full-time work as long as you're not on  
7 standby or you have some other exemption.

8       The individuals have to be capable of looking for --  
9 excuse me -- accepting work for any suitable work that's  
10 in the labor market which they're seeking work. For  
11 example, they can't limit their job search to Seattle and  
12 then say, "well, I'm not available for work in Seattle  
13 because it's too far for me to drive." You have to be  
14 able to accept a job where you're looking for that job.

15       They can't impose conditions that substantially  
16 reduce or limit their opportunity to return to work.  
17 For example, they say, "I won't look for work more than  
18 three miles from my home because I only have a bus."  
19 Usually, the labor market for a particular area is much  
20 broader than three miles. In fact, I can't think of one  
21 where it would be so limited.

22       They have to be available for work during the hours  
23 that are customary for their trade or occupation. So if  
24 it's customary for their occupation to work on weekends,  
25 they have to be available for work on weekends. For

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1 example, somebody who is in some of the service  
2 industries, it's common for them to work on weekends  
3 waitressing or servers, retail sales and so on. It's

4 commonly expected that they will work on weekends and  
5 sometimes evenings, depending on the occupation.

6 They have to be physically present in their normal  
7 labor market area unless they are actively seeking and  
8 willing to accept work outside that labor market. For  
9 example, you can't be in Hawaii and be looking for work  
10 back in Washington while you're on vacation. You have to  
11 be there because you have to be immediately available to  
12 accept work.

13 They are not considered available for work if they  
14 fail or refuse to seek work as required in a directive  
15 issued by the Department. The Department can issue a  
16 written directive at any time. And what this directive  
17 normally does is when somebody's been unsuccessful in  
18 finding work, it may issue a directive telling them to,  
19 for example, expand their geographical area, to change the  
20 method of seeking work. For example, if they've only been  
21 seeking work online or through newspaper ads, we may tell  
22 them that they need to apply in person if that's common  
23 for that occupation, Those types of things.

24 They need to follow up with what the directive tells  
25 them to do. For example, if they're a union member and

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1 they have to check in with their union hall but they're  
2 not, we could issue a directive saying you need to --

3 you're required to check in with your union hall as  
4 whatever their requirements are. Each union has different  
5 requirements as to what somebody has to do to meet their  
6 union dispatch requirements. But there's a variety of  
7 things they could be instructed to do to improve their  
8 opportunities for obtaining work.

9 Did you have a question?

10 MR. MILICI: Yes, I do. There was an occasion last  
11 winter during the snow. There was a break and people  
12 couldn't do construction work. This guy, as soon as the  
13 weather breaks, you come back to work. He did not sign in  
14 at the union hall but there was so little work going on at  
15 the time. He didn't do it. But his employer was going to  
16 bring him back to work. There was a hassle with him  
17 getting it.

18 MS. MYERS: Did he obtain benefits; do you know?

19 MR. MILICI: I don't know if he finally got them, but  
20 there was a big delay up to, in fact, I had to write a  
21 letter for him. This happened last December and I think I  
22 wrote a letter for him somewhere in August. It was still  
23 a hassle that he had to pay it back because he did not  
24 sign the out-of-work list at his local union knowing full  
25 well and had the full --

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2 some unions do, some unions don't, then he could have been  
3 placed on standby with his particular employer. well, he  
4 had to have had a definite return-to-work date. There's  
5 no return-to-work date. But all they have to do is comply  
6 with the union's dispatch requirements. If your union  
7 says for this particular individual because of the weather  
8 you weren't requiring him or her to sign in --

9 MR. SMITH: You can't get standby for weather.

10 MS. MYERS: You can't get standby for weather because  
11 we don't know when they're going back to work. I can see  
12 why there would have been difficulty drawing unemployment  
13 benefits. I don't know if he was finally allowed or not.

14 MR. MILICI: I don't know. I haven't heard back. We  
15 tried to cooperate so that he would get it. Basically,  
16 the job was down. He could not work -- in certain  
17 elements you can't pour concrete when it's subzero because  
18 it freezes. And they said, Shut it down. That's it. As  
19 soon as it thaws out -- you know, it went about a week and  
20 as soon as it thaws out, we'll be back to work.

21 And he was a foreman on the job. His company said,  
22 "Come back to work. We'll call you. Come back to work."  
23 What he did not do -- the hang-up with unemployment with  
24 regard to this guy was that he didn't go down to the union  
25 hall, sign the list. That was the hang-up that

1 unemployment found with the delay in the benefit or the  
2 request that you have to pay it back was because he was  
3 not on the list. There was no point in him being on the  
4 list. He wasn't going to get a short job in that period  
5 of time. He was a foreman with a long history with the  
6 company. He was not going to go find another job for the  
7 three days when nobody was working anyway, or the four  
8 days. It was real stupid.

9 MS. MYERS: well, the notice goes out to the union,  
10 and it says, "Is this individual registered in good  
11 standing with the union? Are they available for  
12 dispatch?" And probably what happened is the union  
13 responded saying, "No. They're not available for  
14 dispatch." And so that's what caused the --

15 MR. MILICI: Because he wasn't on the list.

16 MS. MYERS: Right.

17 MR. MILICI: But it's correctable with an appeal,  
18 correct?

19 MS. MYERS: Yes.

20 The next one is a replacement rule.

21 On the bottom of page 13, leaves of absence.  
22 Basically, a leave of absence is they're absent from work  
23 for reasons that are mutually and voluntarily agreed upon  
24 by the claimant and their employer under either -- or  
25 under a collective bargaining agreement, or a leave to

1 which the individual is entitled under federal or state  
2 law -- for example, of course, there's family leave --  
3 where the employer-employee relationship is continued and  
4 they'll be reinstated in the same or similar job when the  
5 leave expires.

6       If they're on a leave of absence, they're not  
7 unemployed and they're not eligible for unemployment  
8 benefits. If they choose not to return to work when the  
9 leave of absence ends, the separation is treated as a  
10 quit. If there's no job available with the employer when  
11 the leave of absence ends, then we treat the separation as  
12 a layoff.

13       If they've been on medical leave and they are  
14 released for work by the medical provider but the employer  
15 refuses to reinstate them in their job, they're considered  
16 to be laid off and potentially eligible for benefits.

17       There is no leave of absence if the employer offers  
18 only a preference for rehire or a promise of a job if work  
19 exists at the end of the leave. An employee-initiated  
20 leave that only provides fringe benefits during the leave  
21 or preferential status for re-employment is not a leave of  
22 absence but a voluntary quit.

23       And just to say here, there is good cause for  
24 quitting work under illness or disability of the  
25 individual or a member of the individual's immediate

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1 family. They don't draw benefits while they're  
2 unavailable for work, but if they've lost their job,  
3 voluntary quit, because of medical reasons, they could  
4 potentially draw benefits after they're available again  
5 for work.

6 But a temporary or indefinite disciplinary suspension  
7 from work by the employer is not a leave of absence. The  
8 Department treats that as a discharge.

9 MS. MADISON: I come across a lot of claims in the  
10 fishing industry when the claimants have to leave their  
11 job because they get hurt. Because they're on a contract,  
12 the contract ends on the day they get off the vessel or  
13 the day they stop working because of their illness or  
14 injury. And a lot of the appeals that I do, because the  
15 Adjudication Department allowed benefits stating that they  
16 were laid off when the doctor released them to work, and  
17 that clearly is not the fact. The job ended -- when they  
18 got off the vessel, the contract ended. So I'm running  
19 into a lot of those things and I'm wondering if --

20 MS. MYERS: But there's no job for them to return to  
21 at the time --

22 MS. MADISON: The fishing industry --

23 MS. MYERS: -- because the contract ended?

24 MS. MADISON: The contract ended when they get off  
25 the vessel. The claimant has to get off the vessel to

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1 seek further medical care. And because of the fishing  
2 industry, there is no leave of absence. We can't  
3 guarantee that they're --

4 MS. MYERS: So we would consider that a quit for  
5 medical reasons.

6 MS. MADISON: I guess I'm just commenting that the  
7 Adjudication Department, some adjudicators don't  
8 understand that when you file appeals on that issue.

9 MR. MILICI: Can anybody comment?

10 MS. MYERS: Absolutely.

11 MR. MILICI: What happens if you're on a ladder and  
12 you fall off it and you hit the ground? Is that a quit or  
13 -- you're disabled.

14 MS. MYERS: Well, it depends.

15 MR. MILICI: I can see where you wouldn't get  
16 unemployment benefits because you're disabled, but I could  
17 see where you should get something from the Department of  
18 Labor and Industries because you got injured while you  
19 were at work. I think there's something wrong with saying  
20 if you got hurt at work and now you can't come back to  
21 work, or if that's the reason they were laid off is  
22 because they are physically --

23 MS. MYERS: They're not eligible for unemployment  
24 benefits. Whether they're eligible for workers'  
25 compensation benefits is done by a different department.

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1 But once they're able to return to work, then, of course,  
2 they're available for work again. We would look at --  
3 depending on -- there's no leave of absence, you said.  
4 The employer, basically, we would consider that as a quit  
5 for medical reasons. And once they're able to return to  
6 work, they would be eligible for unemployment benefits.

7 MR. MILICI: Right. When they got a doctor's  
8 release.

9 MS. MYERS: Yes.

10 And, sir, can I have you introduce yourself for the  
11 record, and spell your last name?

12 MR. RUDNICK: Certainly. My name is William Rudnick.  
13 I'm the manager for government relations for the Talx  
14 Corporation, T-A-L-X. William is W-I-L-L-I-A-M. Rudnick  
15 is R-U-D-N-I-C-K.

16 MS. MYERS: Thank you very much.

17 We're going over the rules, the new section of rules.  
18 We're on page 14. I'm skipping over the rules that say  
19 that they simply replace an existing rule because that's  
20 only done to move them into a different subject chapter  
21 and to update the language and clarify the wording to make  
22 it a little easier for the general public to read rather  
23 than writing in bureaucratic-type terms. Unless you have  
24 a question about a particular replacement rule, we'll go  
25 ahead and skip over those.

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1           So we're on page 14 discussing incarceration. If an  
2 individual deliberately engages in illegal activities  
3 where they're aware that there's a clear possibility of  
4 arrest and detention for an extended period of time,  
5 they're also aware that incarceration may result in  
6 absence from work and misconduct may be established under  
7 the statute cited there, which says misconduct can include  
8 excessive absenteeism from work. If they are jailed but  
9 later released without having been charged with or  
10 convicted of a crime, the separation is not considered  
11 misconduct except as provided in (3) which basically says  
12 that the employer discharges the individual for  
13 absenteeism or job abandonment because they failed without  
14 good cause to notify the employer of their incarceration  
15 or anticipated release date.

16           MR. TURNER: What is the Department's view on what's  
17 excessive absenteeism?

18           MS. MYERS: Well, again, that depends on individual  
19 circumstances. For example, how often they are -- it  
20 looks at the employer's policy, what the claimant was told  
21 at the time of hire. For example, how many days they were  
22 allowed to miss from work or what they are -- for example,  
23 if they accrue leave, are they beyond that accrual. I  
24 mean, there's a variety of circumstances. A lot of times  
25 it has to do with the agreement to what the employer hired

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1 -- excuse me -- said, or depending on case law. For  
2 example, if somebody was gone from work for three months  
3 straight, obviously, that's excessive absenteeism. If  
4 they're gone for three days, that's probably not  
5 excessive.

6 MR. TURNER: Three days in maybe a week or in a  
7 two-week period? Right now, the reason why I'm getting at  
8 this is because in today's economy, I've seen some  
9 employers or some foreman on a construction site, a guy  
10 misses a day, see you later. And he's been terminated and  
11 they'll challenge the unemployment on him.

12 MS. MYERS: They have to miss at least -- it's one or  
13 more days, correct? It's more than one day.

14 MR. SMITH: I would look at, see what the policy is  
15 by the employer, what they state. Were they given a final  
16 warning in regards to their absence? They were told if  
17 you miss work again without bringing a doctor's note,  
18 whatever, you can be terminated. And then they miss work  
19 again, they'll have a valid reason. We look at the final  
20 incident and we see were they warned -- previously warned  
21 for their absences, was it something habitual, will the  
22 employer provide documentation these were the dates this  
23 person was absent, I gave him a verbal warning here,  
24 written warning on this date, final warning here, and then  
25 they went ahead and did it again. In that instance, if

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1 the documentation is there, all their ducks are in a row,  
2 we'll go ahead and most likely deny them for that.

3 MS. MYERS: And one of the reasons why employers lose  
4 a lot of these types of appeals is they don't have  
5 documentation of what they told the employee and if they  
6 issued them warnings. Even if they've had a number of  
7 absences, if the final occurrence is one that's excused  
8 under medical reasons, they had a doctor's note, then that  
9 still may not be excessive absenteeism.

10 MR. MILICI: No-show, no-call is considered by our  
11 employers as grounds for dismissal with cause. There's  
12 always an orientation period where normally they hire  
13 somebody, there's an orientation period. If you can't  
14 make it to work, call your foremen. Here's his number.  
15 No-show, no-call, I've seen it goes down to two no-shows,  
16 no-calls, you don't want the job. You're out of here.  
17 You're replaced.

18 MR. SMITH: And if you tell them that ahead of time  
19 and it's part of the rules, that should be fine.

20 MR. MILICI: During orientation if that's  
21 discussed --

22 MR. SMITH: Yeah. If it's stressed this is it, you  
23 don't call in, you don't show up to work --

24 MR. MILICI: You quit.

25 MR. SMITH: Yeah. And if the claimant files a claim,

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1 we'll ask them, "were you told of this?" they say, "Yes, I  
2 was told" --

3 MS. MYERS: And that wouldn't fall under excessive  
4 absenteeism. There's another --

5 MR. MILICI: No, it's not. It's sloppy behavior.

6 MR. SMITH: We may consider that a violation of  
7 company rules.

8 MS. MYERS: The employer has a right to expect  
9 individuals to follow reasonable rules that they've told  
10 them about at the time of hire.

11 Did you have a question?

12 MR. RUDNICK: So with this new section are you saying  
13 that this will supercede any previous adjudications that  
14 were done under the Commissioner's decision in Sanchez?

15 MS. MYERS: Yes.

16 MR. RUDNICK: Because that was pretty much what we  
17 relied on for a number of years to interpret whether or  
18 not incarceration was going to be a disqualifying event.

19 MS. MYERS: Any rules we have would supersede any  
20 Commissioner's decisions or so on. I'll have to look at  
21 the Sanchez decision to see if there's other information.

22 MR. RUDNICK: There's two of them. One is for  
23 incarceration.

24           So a second question then would be if you said  
25 they're jailed but later released without being convicted

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1 of a crime, let's say the whole situation is pending at  
2 the time that a claim is posted and adjudicated, does that  
3 mean that a redetermination would be made at a later time  
4 if a conviction is upheld and information is provided to  
5 the Employment Security Department in a timely fashion?

6           MS. MYERS: In a timely fashion, in that case it  
7 would have to be connected with the work, it would have to  
8 be a crime connected with the job, and then the employer  
9 has six months after conviction to notify the Department  
10 of that conviction.

11           MR. RUDNICK: So if I'm jailed for a DUI, which I  
12 wasn't driving a company truck or on company time when the  
13 incident occurred, you're saying that I'm incarcerated and  
14 don't report to work, then you're saying that's no longer  
15 considered misconduct?

16           MS. MYERS: If you don't report to work and you not  
17 notify the employer?

18           MR. RUDNICK: I'll take it one step at a time. I  
19 don't report to work. I'm incarcerated. My job says that  
20 he missed three days, no-call, no-show. And I said, "I  
21 couldn't call. I was incarcerated in Sunnyside. They  
22 wouldn't let me out over the weekend to call." That's

23 normally the fact pattern I've seen in the past. You  
24 can't call anybody if I was stuck in jail on Friday night  
25 and they didn't let me have a phone call until Monday

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1 morning.

2 MS. MYERS: There's a newer court decision --  
3 published court decision which, I'm sorry, I will get back  
4 to you. I don't remember the name of it offhand. But it  
5 said it's not misconduct if the employer -- if the  
6 claimant tried to contact the employer, made an attempt  
7 but they were unable to do so. Because, for example, I  
8 know in a number of cases or most cases, jails require  
9 that calls be made collect, and they try to call their  
10 employer, and the employer doesn't accept collect calls,  
11 or if there's nobody else that they could call, then the  
12 court held that that was not job abandonment. That was  
13 not misconduct in that particular case. And I can get you  
14 the site for that particular one.

15 MR. RUDNICK: That would overrule Sanchez because  
16 Sanchez says if you basically did something that you knew  
17 you could be incarcerated for, you got behind the wheel of  
18 a car and you were intoxicated, you knowingly should have  
19 been not driving the car, you end up in jail and miss  
20 work, that's misconduct.

21 MS. MYERS: Right. Which is what Section 1 says.

22 But Section 2 is talking about situations in which an  
23 individual was maybe put in jail but they were released,  
24 they weren't charged with anything, which can happen.  
25 Somebody can be picked up or charged for some behavior

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1 that the police department later decides wasn't committed  
2 or they're innocent of the particular crime, they didn't  
3 do it is what that is intended to cover.

4 MS. MADISON: Under Section 2, if the employee is  
5 already on a final warning for absenteeism and the last  
6 occurrence was because they were in jail and the employer  
7 considers them a no-call, no-show, then at that time,  
8 would that still make the claimant ineligible for  
9 benefits?

10 MS. MYERS: Well, part of it is did they fail to  
11 call. Was there failure to call something beyond --

12 MS. MADISON: It was no-call, no-show.

13 MS. MYERS: But could they not call out from the jail  
14 because they were unable to do so because they couldn't  
15 do --

16 MS. MADISON: No calling card.

17 MS. MYERS: No calling card, no collect calls. Then  
18 again, probably it would depend on the individual facts.  
19 I would say it's possible that they could be allowed  
20 benefits under that -- excuse me -- would not be denied on

21 a no-call, no-show under that circumstances, correct  
22 Chris?

23 MR. SMITH: Yeah. We'll have to look at -- look at  
24 -- once we gather all the facts, then they can make a  
25 better determination.

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1 MS. MYERS: So we look at what happened on that  
2 particular day that caused that individual to be fired.

3 MS. MADISON: It would be a no-call, no-show.

4 MS. MYERS: Right. But it would depend also on the  
5 decision I just talked about -- and I'm sorry, I don't  
6 remember the name offhand -- that said that it's not  
7 misconduct if they were unable to call. They had good  
8 cause not to call. In that particular instance, in that  
9 particular case, the individual was jailed for violating a  
10 domestic violence harassment order or stay-away order and  
11 was picked up and arrested and got a sentence of three  
12 days, but one of those days was Monday and he was unable  
13 to call out until that Monday to let them know. He was  
14 able to get a message through somebody else that he  
15 contacted. But Saturday and Sunday were part of his work  
16 days and he was fired as a no-call, no-show for Saturday  
17 -- Saturday and Sunday, but the court held that he had  
18 good cause for failing to contact the employer because he  
19 made an attempt. He wasn't able to get through because of

20 the collect call and he was unable to reach anybody else  
21 on the outside that could call on his behalf.

22 MS. MADISON: Wouldn't that be appealed because it  
23 was his action that caused him to be jailed, he violated  
24 the no-contact order?

25 MS. MYERS: Well, not in the case -- the court case

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1 finding.

2 MS. MADISON: Is there another section where the  
3 employer could get relief of charges? Because it's not  
4 the employer's fault that they're not employed. The  
5 employer is just following his rules.

6 MS. MYERS: Right. If the discharge is not  
7 attributable to the employer, then they can request relief  
8 of charges, certainly.

9 Somebody else had a question before we move on.

10 MR. RUDNICK: Just to go back to Section 2, it  
11 distinguishes the without being charged or convicted of a  
12 crime. If a charge is brought, even if it's a probable  
13 cause, is that considered then meeting the standard of  
14 that particular -- because I see conviction and then  
15 there's an adjudication. Probable cause can go either  
16 way. The only reason I'm kind of drilling down on this is  
17 perhaps the question that was just asked about whether  
18 they get caught or not, they can be charged. And

19 eventually they're going to get an arraignment. Even if  
20 they call out or they have a calling card, there's  
21 reasonable attempts that can be made through a public  
22 defender or hearing officer or a judge to contact the  
23 employer. I see so many cases that slip through the  
24 cracks.

25 MS. MYERS: Let me look at the Sanchez decision and

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1 see if this section of the rule can be clarified or  
2 amended. Because if it's not clear to everybody here,  
3 then it's not clear. So that section I'll make a note of  
4 that we need to look at possibly doing some rewording.

5 MR. RUDNICK: Thank you.

6 MS. MYERS: Finally, an individual is not considered  
7 unavailable for work during any days in which they are  
8 incarcerated unless those days -- they will be considered  
9 unavailable for work during any days in which they are  
10 incarcerated unless those days aren't part of their normal  
11 work week. For example, they're sentenced to a specific  
12 time in custody but they're allowed to serve their time on  
13 weekends, and those weekends, if they are not part of  
14 their normal work week, then the individual is not  
15 considered unavailable for work for those days. For  
16 example, they have a job that works Monday through Friday  
17 only and they're incarcerated, they're allowed to serve

18 their time on weekends, they're not unavailable for work.

19 The top of the next page, I don't know if you folks  
20 are interested in this particular rule, but it depends on  
21 -- it discusses stipends received by AmeriCorps and  
22 AmeriCorps VISTA volunteers. I don't know if that would  
23 interest anyone here to go through.

24 At the bottom of the page we have a new chapter  
25 called deductions from unemployment benefits. And what

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1 that primarily does is move into rule form the  
2 Department's existing policies on a number of subjects.

3 The first one is income tax withholding. An  
4 individual can request to have income tax withheld from  
5 their benefits, and we'll deduct it based on the  
6 percentage specified by the Internal Revenue Service.  
7 Right now if somebody wants taxes withheld from their  
8 unemployment benefits, it's withheld at 10 percent. And  
9 we don't have a choice on that. It used to be 15 percent,  
10 but right now the IRS rules changed and now it's  
11 10 percent of their benefits would be withheld for the IRS  
12 because the income is taxable -- unemployment benefits are  
13 taxable, so a lot of people want their income tax withheld  
14 at the time so they're not faced with a tax bill at the  
15 end of the year.

16 The next rule that's a new rule, it's on the bottom

17 of page 18, and that's talking about is reimbursement of  
18 expenses deductible from benefits. The money paid as  
19 reimbursement of expenses is not deductible. However,  
20 there has to be a reasonable relationship between the  
21 amount paid and the actual expenses incurred. If the  
22 amount paid is greater than actual expenses, then the  
23 entire amount has to be reported as remuneration and may  
24 be deducted from their weekly benefit amount. And we give  
25 two examples.

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1 And this is actually the number one example we get is  
2 for volunteer firefighters. This is the number one  
3 question we get asked on this subject is if somebody is  
4 paid \$25 for each fire call and it's considered  
5 reimbursement for the cost associated with responding to  
6 the fire call, then they are not required to report that  
7 amount when filing their claim and the money would not be  
8 deducted from their benefits. But on the other side, if a  
9 volunteer firefighter is, say, for example, paid \$50 a  
10 week even if he or she has no fire calls during that week,  
11 it is considered remuneration because there is no  
12 relationship between the payment and the cost associated  
13 with services of a firefighter, and the payments have to  
14 be reported to the Department when filing their claim and  
15 it would be deducted from their unemployment benefits.

16           Vacation or holiday pay. An individual must report  
17 vacation and holiday pay when filing their claim for  
18 benefits. If vacation or holiday pay is assigned to a  
19 specific time period by their employer or as part of a  
20 collective bargaining agreement, the Department will  
21 deduct it from your benefits. For example, if you're told  
22 we're doing our shutdown for this week for plant  
23 refurbishing or something, we're going to be closed for  
24 two weeks and you're getting vacation pay for those  
25 assigned two weeks, then those are deducted from benefits.

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1 But, say, for example, you're cashing out your leave,  
2 you're laid off from employment and you've accrued 200  
3 hours of vacation leave or 100 hours of vacation leave and  
4 you're just going to cash that out, there's no assignment  
5 -- it's not assigned to a particular day, so that is not  
6 deductible from your unemployment benefits. It's only  
7 deductible if it's assigned either by your employer or  
8 under a collective bargaining agreement to a particular  
9 period of time.

10           Back pay and settlements. Back pay means wages that  
11 are paid to an employee for a prior pay period. An  
12 employer can award back pay to a separated or suspended  
13 employee for a specific period of time. If they receive  
14 benefits for any weeks that are covered by the back pay,

15 they have to report the amount of the back pay to the  
16 Department. The employer, under law, is required to  
17 deduct the amount owed -- that is owed to the Department  
18 for those unemployment benefits received during that time  
19 to the Department, but frequently the employer does not do  
20 so. And if they don't, then it's up to the claimant --  
21 then the claimant is required to make that notification to  
22 the Department. For example, if they were suspended for  
23 four weeks and they drew unemployment benefits for those  
24 four weeks and the employer reinstates them and gives them  
25 back pay for those four weeks, then they owe us back for

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1 the unemployment benefits that they received during that  
2 period of time.

3 A back pay award can't be used to purge a  
4 disqualifying separation. What that means is if they're  
5 fired for misconduct and we deny their benefits, and then  
6 the employer gives them -- and they have to earn ten times  
7 their weekly benefit amount to reinstate their claim. If  
8 the employer gives them a back pay award, that's not  
9 considered earnings in that case and that's not going to  
10 qualify to lift the disqualifications not considered  
11 earning ten times their weekly benefit amount.

12 Severance pay is not deductible from unemployment  
13 benefits.

14 MR. RUDNICK: And this may not be directed to the  
15 section here, but what is the Department's suggestion or  
16 recommendation for an employer that is in negotiations for  
17 maybe a reinstatement or grievance or whatever to  
18 determine at that point how much is owed in unemployment?  
19 Say unemployment was collected for a period of time, like  
20 you said, four weeks, for example. That question comes up  
21 quite often from employers who come to a settlement.  
22 We're going to reinstate, what do we back out of the award  
23 for back pay? How best can they determine that at some  
24 point in time? Contact someone in --  
25 MS. MYERS: Contact the Department.

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1 MR. RUDNICK: Anyone in particular?  
2 MS. MYERS: They contact the telecenter. They call  
3 the telecenter. It's an employer line into the telecenter  
4 and ask them how much unemployment benefits that  
5 individual drew for that period of time, and that's the  
6 amount that should be withdrawn from the back pay award  
7 and returned to the Department. And they'll give you  
8 instructions on how to do that when you call in.  
9 Maria, you had a question?  
10 MS. MADISON: Yes. In Section 3 of this back pay and  
11 settlements, my parent company, they handle injury claims  
12 for fishermen out at sea. And usually, after a few

13 months, they do a settlement with the crew member. So  
14 does this state that the settlement has to be reported now  
15 by the claimant? The settlement is usually for lost wages  
16 and pain and suffering.

17 MS. CARDENAS-SHORT: Is the payment while the person  
18 was unable to work, right? If they were injured, is that  
19 the pay that you are referring to?

20 MS. MADISON: If they were injured.

21 MS. CARDENAS-SHORT: I believe they'd need to be  
22 available for work for unemployment benefits.

23 MS. MADISON: They usually don't do a settlement  
24 until usually when they're released from the doctor or  
25 they're at maximum medical cure. And they do provide

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1 additional funds for additional time periods if they need  
2 to get more medical care. So they give them a lump sum  
3 for that.

4 MS. MYERS: I can double check on that. But I  
5 believe the reason I drafted this is that a settlement  
6 should be treated the same as a back pay award. But I  
7 will double check to make sure I've got it right because I  
8 want to have the rule correct.

9 MS. MADISON: And they don't call them lost wages in  
10 the marine industry, they call them unearned wages. It's  
11 what they would have earned had they continued working on

12 the vessel.

13 MS. CARDENAS-SHORT: while disabled.

14 MS. MADISON: Yes.

15 MS. MYERS: I'll go back and make sure that that's  
16 correct.

17 MS. MADISON: Because we have been telling the  
18 claimants that the funds that they receive are not  
19 taxable. And I don't know if that's a different topic  
20 than unemployment.

21 MS. MYERS: That would be different.

22 we already talked about severance pay.

23 Termination pay is the same as earnings and it's  
24 deductible from benefits. It means that payments that are  
25 assigned to and have a connection with the period

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1 following the last day in which they worked but before  
2 they're separated from employment. For example, you stop  
3 working. Based on an agreement, the employer is going to  
4 basically say, "We're terminating you but we're going to  
5 pay you through the end of your contract." That's  
6 deductible from benefits. It's considered the same as  
7 earnings. It can be -- most commonly it's connected to a  
8 specific period of time by a collective bargaining  
9 agreement or an individual hiring contract.

10 The employer can place conditions for receiving

11 payments such as requiring that they be available for work  
12 during the payment period as needed or stopping payment  
13 before the payment period ends if you get another job.  
14 Those are some conditions that can be placed on the  
15 employment -- on the receipt of termination pay. And then  
16 we give a couple of examples.

17       Payment in lieu of notice. If the individual has a  
18 contract or hiring agreement that requires the employer to  
19 give them advanced notice of termination and the employer  
20 fails to do so, the payments they receive from the  
21 employer for the wages or salary they would have earned  
22 during the notice period are deductible from unemployment  
23 benefits. But if you give notice to the employer to quit  
24 work and the employer discharges you before the end of the  
25 notice period, any wages paid to you through the end of

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1 the notice period are deductible from benefits.

2       The top of page 22, bonuses. A bonus is deductible  
3 if it's attributal to work they performed during a week in  
4 which they claimed unemployment benefits. For example,  
5 you worked 20 hours a week, you're getting partial  
6 unemployment benefits. Based on productivity for that  
7 week, the employer awards a \$50 cash bonus to the workers  
8 including the claimant. That \$50 is deductible from  
9 unemployment benefits. But if a bonus is not attributable

10 to work that they performed during a week in which they're  
11 claiming unemployment benefits, it's not deductible. And  
12 the example there is, for example, you worked eight months  
13 for an employer and then you're laid off. At the end of  
14 the year, the employer pays each worker a bonus of \$100  
15 for each month they worked during the calendar year. The  
16 claimant receives \$800 based on their eight months of  
17 work. It's not attributable to the work performed before  
18 you separated from your job. It's not assigned to any  
19 week in which you claimed unemployment benefits, so it's  
20 not deductible from your benefits.

21 And then it talks about bonus includes but not  
22 limited to cash payments and other things of value that  
23 are over and above the employment contract or hiring  
24 agreement.

25 Tips are considered earnings and they must be

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1 reported and they are deductible from unemployment  
2 benefits.

3 Jury duty. Payment received while they're on call or  
4 reporting as a prospective juror or serving on a jury is  
5 considered earnings and is deductible from benefits.

6 Payment received as reimbursement of expenses for travel,  
7 meals and other costs associated with jury duty is not  
8 deductible. Again, that goes back to the rule we talked

9 about for reimbursed expenses.  
10 Sick leave pay. This represents a change in policy  
11 for the Department, part of it does. You must report sick  
12 leave pay when you file your claim for benefits. It's  
13 treated as earnings and is deductible from benefits. But  
14 if your benefits are reduced because you reported sick  
15 leave pay, they will not be further reduced because you  
16 were not able to work on the days for which you were paid  
17 sick leave. For example, if somebody is sick on a Monday  
18 and that's their normal day of work and it's paid sick  
19 leave, we already deduct their earnings for that  
20 particular day. But the law also says we should deduct  
21 1/7 of their unemployment benefits for the week because  
22 they were unavailable for work one day. So essentially,  
23 they're getting a double whammy. They're getting their  
24 pay deducted and they're missing unemployment benefits for  
25 a day because they are unavailable for work. So what this

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1 rule is saying is we'll deduct for the earnings but we  
2 won't do a second deduction for the 1/7 if they're absent  
3 from work. They'll simply get the single deduction rather  
4 than two deductions for one day of sickness.

5 MR. RUDNICK: Sick leave pay that's accumulated and  
6 paid off at the time of separation, how is that treated?

7 MS. MYERS: That's not deductible from benefits.

8 would it help you to clarify that here?

9 MR. RUDNICK: Potentially. Some employers call it  
10 sick leave pay and some employers call it paid time, PEO.  
11 They just lump it all together.

12 MS. MYERS: Thank you.

13 Disability payments. These are a fine-line  
14 difference but they're based on court decisions.  
15 Disability payments paid to the claimant by an insurance  
16 company based on premiums paid by the employer are not  
17 earnings and not deductible from benefits. On the other  
18 hand, disability payments paid to you from a trust fund  
19 paid solely by the employer's contributions are earnings  
20 and are deductible from benefits. And why they made that  
21 distinction, I'm not quite certain. But those are two  
22 separate court cases and we're obligated to follow those.

23 MS. MADISON: That's sort of what applies to the  
24 fishing industry, the disability payments. Depending on  
25 how severe the injury or illness is, the insurance

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1 companies do put a huge amount of money into a trust fund  
2 and that's distributed to the injured person.

3 MS. MYERS: But if they're paid to them by the  
4 insurance company, they're not deductible from benefits.  
5 If they are paid by the employer into a trust fund, they  
6 are.

7 MS. MADISON: It's by the employer.

8 MS. MYERS: So it's by the employer. Then it would  
9 be deductible.

10 work-study earnings essentially are not deductible  
11 from benefits in most cases. I can go through that if  
12 anybody is interested in that particular rule.

13 National Guard pay is deductible if they're on active  
14 duty for more than 72 consecutive hours.

15 This next section just talks about AmeriCorps  
16 stipends again.

17 On page 25 we're talking about educational employees  
18 are subject to the statute which says that they are  
19 provided a reasonable assurance to return to work. Is  
20 anybody interested in that particular rule to go through?

21 MR. RUDNICK: Yes.

22 MS. MYERS: You are.

23 So the law on reasonable assurance to return to work  
24 applies to schools operated by the state, a political  
25 subdivision of the state, a nonprofit organization or an

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1 Indian tribe. Basically, it excludes for-profit schools.  
2 It doesn't -- it also doesn't apply if you are employed by  
3 a subsidiary business or organization that's owned or  
4 operated by an educational institution under three  
5 circumstances: the primary purpose of this subsidiary

6 business or organization is not educational, they're not  
7 employed in the role of faculty, research or principal  
8 administrative staff, and their regular employment does  
9 not depend on the school's academic calendar. A common  
10 one for this is individuals who are employed by a  
11 college's radio station. Technically, they are employees  
12 of the college but the purpose of the business is not  
13 educational, they're not employed in the role of faculty  
14 or research, and their regular employment does not depend  
15 on the school's academic calendar. In that case, they are  
16 not subject to having their wages restricted during off  
17 periods.

18 MR. RUDNICK: What if it could be demonstrated that  
19 the person employed by the radio station being run by the  
20 schools are also receiving school credits for that  
21 particular occupation? An internship, for example -- a  
22 paid internship.

23 MS. MYERS: They wouldn't be subject to the wage  
24 restriction but their wages wouldn't be deductible from  
25 benefits unless they were on work-study.

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1 MR. RUDNICK: And if I could go back to work-study  
2 real quick. Normally, if I'm correct, a work-study or  
3 federal grant program for a student wouldn't be reportable  
4 wages anyway for purposes of UI; is that correct?

5 MS. MYERS: It's reportable. But whether it's  
6 deductible or not depends on where the funding is coming  
7 from. If it's coming from a financial aid grant that  
8 includes federal or state funds, then it's not deductible  
9 from benefits. For example -- I should say not just  
10 federal funds, funded under the Higher Education Act. But  
11 if it's funded by other programs like the workforce  
12 Investment Act and, for example, it's for a private  
13 employer or a public employer, then it would be deductible  
14 from benefits. There's an exemption in the Higher  
15 Education Act that says Title IV funds used for financial  
16 aid are not deductible from benefits. So it depends on  
17 where the funding comes from as to whether it would be  
18 deductible or not.

19 MR. RUDNICK: But reportable by the employer who paid  
20 wages, but it would not be reportable -- the employer  
21 would report those as wages.

22 MS. MYERS: I don't know if the employer reports them  
23 or not. They should not be reported if they're  
24 work-study.

25 They have to meet all three criteria in order for

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1 their services to be exempt from the provisions of the  
2 statute. For example, one of the common ones we get is  
3 individuals work Pack Forest, which is operated by the

4 University of Washington, and they're a forestry worker.  
5 They are still subject to the reasonable assurance  
6 guidelines even though they are not employed in the role  
7 of faculty or research, their employment does not depend  
8 on the academic calendar. But the primary purpose of that  
9 subsidiary business, Pack Forest, is educational. It's  
10 operated by the College of Forest Resources. So  
11 regardless of the occupation, if they work for that  
12 particular institution or, for example, Washington State  
13 University extension programs, then they are subject to  
14 the wage restrictions during breaks between academic years  
15 or terms. And I also have the example for a radio station  
16 at the bottom of that page.

17       when does reasonable assurance apply if somebody  
18 works for more than one school. This is very common where  
19 somebody is, for example, a substitute teacher and they  
20 work for five or six different schools, or somebody is a  
21 part-time college instructor and they work for two  
22 schools: they work halftime at one, halftime at the  
23 other. The restriction on their wages begins when the  
24 first school goes out and until the last school returns.  
25 Because if they've got -- if they've got reasonable

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1 assurance of working for any period of time, then their  
2 benefits are restricted. So an example here says I work

3 for one school, summer is not part of the academic year,  
4 break begins June 15th and ends on September 2nd, I work  
5 for a second school, the break starts June 22nd and ends  
6 September 9th. My school wages are restricted from June  
7 14th, which is the date the first school went out, through  
8 June 9th (sic), which is the date the last school returned  
9 to work. We get a lot of questions about this. So it's  
10 just putting it into rule largely for our purposes.

11 The next section is a replacement rule.

12 And the final one just codifies what's in federal  
13 law. And it deals with professional athletes, that  
14 they're not eligible for benefits during the period  
15 between two successive sport seasons when most, or  
16 substantially all, which is defined to mean 90 percent of  
17 their earnings or wages, were earned through participation  
18 in professional sports or athletic events.

19 MS. CROWDER: I guess my comment on that would be  
20 that that could pretty much incorporate the maritime  
21 industry as well. And when I say "maritime industry," I'm  
22 not necessarily referring to the people that work on the  
23 docks or the longshoremen. I'm actually talking about the  
24 vessel employees that are on a boat for an extended period  
25 of time.

□

1 MS. MYERS: If you look at the definition on the next

2 page, do you still think that's covered where it says it  
3 covers regular players, or team players and the alternate  
4 player?

5 MS. CROWDER: I can pretty much incorporate my crew,  
6 my captains, my mates, my able-bodied seamen.

7 MS. MYERS: I would doubt that they'd fall under the  
8 definition of professional --

9 MS. MADISON: No. But we're just saying that it's a  
10 similar rule.

11 MS. MYERS: There is no similar rule for other than  
12 professional athletes. This applies solely to --

13 MS. MADISON: Because the fishing vessels cannot  
14 operate without this key crew.

15 MS. MYERS: But this particular rule does not apply  
16 unless they are professional athletes. Basically, it's  
17 intended to cover somebody who works on -- who's employed  
18 by the Seattle Seahawks can't draw unemployment benefits  
19 during the breaks between seasons, not that they'd want to  
20 because their wages are so much higher. But that's what  
21 the rule is intended to cover.

22 MS. MADISON: We're just wondering if a similar rule  
23 could be implemented for the maritime industry for these  
24 key positions.

25 MS. MYERS: No. Because we can't single out

1 individual industries for different treatment unless it's  
2 covered in federal law.

3 MS. MADISON: And isn't this an industry, the  
4 professional --

5 MS. MYERS: Professional athletes is a requirement to  
6 federal law. We're just putting it into rule because the  
7 public generally doesn't have access to federal law. So  
8 we're putting it into our rule so it's easier to find.  
9 No. We couldn't do one for the maritime industry.

10 Was there a question over here?

11 MR. TURNER: So an athlete, his season ends and his  
12 contract is up, is eligible for unemployment until he  
13 signs with another team; is that correct?

14 MS. MYERS: He has to have reasonable assurance of  
15 going back to work as a sports person, a sports team  
16 player or -- what else do we say here? An alternate  
17 player, they are training to become a regular player. It  
18 doesn't have to be a return to that particular team, but  
19 if they have reasonable assurance of returning back to  
20 another team, then they're denied -- they're denied during  
21 seasons if at least 90 percent of their base year wages is  
22 based on professional sports. Just in most cases we just  
23 don't pay professional athletes unemployment benefits.

24 Let's move to the amended rules. A lot of these are  
25 just technical and we can go through quickly.

1           The first one is just some technical changes to clean  
2 up the language by calling -- that somebody can reopen  
3 their claim by Internet or by calling the unemployment  
4 claims telecenter.

5           The next page, notice to employer. That's simply  
6 cleaning up some language making it -- putting it into  
7 active voice and removing language that applied only to  
8 claims filed prior to January 4, 2004.

9           On page 3, mailing addresses for the notice to  
10 employer. Right now we mail the notice to the address  
11 provided by the claimant. And this changes it around to  
12 say we're first going to notify -- the first choice will  
13 be send the notice to the last employer of the claimant,  
14 and then if the employer has notified the Department that  
15 the employer is represented for unemployment purposes,  
16 we're going to mail it to the employer rep. If the  
17 employer has provided the Department with another mailing  
18 address, the Department will mail the notice to that  
19 address. And then only if we don't have either of those,  
20 we'll provide -- we'll mail the notice to the last  
21 employer to the address provided by the claimant.

22           And the reason to go to the address provided by the  
23 employer is a lot of times a claimant will say, "I work  
24 for Safeway," and it's at the corner of whatever streets.  
25 That Safeway store does not generally handle the

1 unemployment claims. They're handled at a separate  
2 office. So we need to mail them to the office that would  
3 handle the unemployment claims. Or if they're represented  
4 by an employer representative, we would first take that  
5 option and mail it to the employer rep.

6 MS. MADISON: A lot of times I do send the power of  
7 attorney notice to the Status Unit and I still don't get  
8 notified.

9 MS. MYERS: You should be.

10 MS. MADISON: I tried so many times, notified  
11 everybody and I still don't get the notices. And when  
12 adjudication calls to get information, they still call the  
13 employer. They don't call my office. And the  
14 adjudicators informed that they were not aware that I was  
15 a representative.

16 MS. MYERS: Right. Because it didn't get entered  
17 into the Status Unit for some reason. And I have no  
18 explanation as to why the Status Unit would not have  
19 updated your records. They should.

20 MS. MADISON: I have had clients for 20 years,  
21 15 years, and the same thing.

22 MS. MYERS: If you have some examples, if you could  
23 send them to me, I can take them down to the Status Unit  
24 and see what's going on, okay?

25 MS. MADISON: Okay.

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1 MS. MYERS: I don't know why they wouldn't update  
2 your record.

3 MR. SMITH: It should be done.

4 MS. MADISON: Some adjudicators inform me that they  
5 have to look at a separate screen in their system to get  
6 that information, and a lot of adjudicators say that they  
7 don't know how to get to that screen. I don't know what  
8 screen they're referring to, but they -- it's not where  
9 they normally look.

10 MS. MYERS: If they don't know how to get to the  
11 taxes screens, they need some training.

12 MS. MADISON: That's just what I'm being told by  
13 them.

14 MS. MYERS: We have a lot of new adjudicators and  
15 that may be part of the problem.

16 MS. MADISON: We need to excuse ourselves. We have  
17 another meeting to go to.

18 MS. MYERS: If you have any comments about the  
19 remaining rules that you weren't able to get to today,  
20 please go ahead and send them to me.

21 MS. MADISON: I will. Thank you.

22 MS. MYERS: Thank you.

23 MR. RUDNICK: On that issue, we recently had the same  
24 experience with a few clients here in Washington State.  
25 For some reason the 5361 started going back to the old

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1 corporate address for the client, and we're still having  
2 that issue occur. And we've been the address of record  
3 for years.

4 MS. MYERS: Why don't you give me that one too after  
5 the meeting, if you can, or if you can send it to me.

6 MR. RUDNICK: I can e-mail it to you.

7 MS. MYERS: If you can e-mail me, I'll send it down  
8 to the Status Unit and see what's going on.

9 MR. RUDNICK: It sounds very similar to what she was  
10 saying from our client data services is telling us that  
11 the adjudicator would say, "This is what we have." My  
12 understanding is it's drawn from the database.

13 MS. MYERS: I have no idea why they wouldn't be  
14 updating your record. It's a different section, different  
15 floor of the building. But I would be happy to, if you  
16 can give me the information, forward it down and see  
17 what's going on, see if we can get that information  
18 corrected.

19 The next rule on page 5, again, it's just cleaning up  
20 the language and removing language that refers to claims  
21 prior to January 4th of '04.

22 The next section, starting on page 6, the substantive  
23 changes on page 7, right now what happens is an  
24 individual, when they file -- they're filing for benefits  
25 and they stopped claiming for a period of time for

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1 whatever reason, they went back to work for a period of  
2 time and now they need to reopen their claim, what they're  
3 required to do is they call to reopen during the week in  
4 which they're separated, and then they file their claim  
5 the following week. And what happens a lot of times is  
6 they don't call the first week that they're actually laid  
7 off. They don't call in to reopen their claim. They  
8 simply try to start filing their weekly claims the  
9 following week because a lot of times they're confused and  
10 they've been told, "File your claim after the end of the  
11 week." And what that does for them is a lot of times we  
12 have to do -- they may get denied benefits for that  
13 previous week for failure to reopen and it creates  
14 workload for the Department. And as you may know with the  
15 economy the way it is now, our workload is high enough.

16 So what this is going to do is if they haven't  
17 received their first payment, they can go ahead and claim  
18 benefits for one week prior to the date they contact the  
19 Department to start -- we'll backdate it automatically  
20 that one week. If they've already received their first  
21 payment and more than four consecutive weeks have elapsed  
22 since they last filed, we'll backdate it up to four weeks  
23 so that we can say, "Okay, you're trying to reopen now,  
24 you were actually laid off two or three weeks ago. We'll  
25 backdate it because you already got your first pay." So

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1 it's a win-win situation. It will help the claimant, it  
2 will help the Department by cutting down on the number of  
3 issues that we have to adjudicate.

4 MR. MILICI: Can you be paid if you fail to file or  
5 if you delay the reopening of the claim? I thought you're  
6 supposed to file weekly, and if you failed to do that, you  
7 don't get it. If you don't claim it, you don't get it.

8 MS. MYERS: Right. You have to file a weekly claim.  
9 But what they're saying is if you fail to reopen your  
10 claim, for some reason you stopped claiming for a period  
11 of time and now you're reopening your claim, but there's a  
12 lot of times confusion on the part of the claimant as to  
13 when they reopen. So they try to file their weekly claim,  
14 but they can't because they're not in the system anymore  
15 because they stopped working that period of time. So what  
16 we'll say is, "Okay. We'll backdate your reopen to up to  
17 four weeks, and we'll send you the paperwork." They'll  
18 have to do -- file by paper, but we'll allow you to claim  
19 those back four weeks and draw benefits for them. They  
20 still have to claim them, but we'll reopen them up to four  
21 weeks prior.

22 The rest of that particular rule, the changes, are  
23 simply technical in nature.

24 The bottom of page 9, personal identification number.  
25 The only significant change on that is the rule primarily

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1 or used to say that they are responsible for any payments  
2 made as a result of the use of their PIN. But we're  
3 adding a statement that says unless they provide evidence  
4 showing that they didn't authorize the use of that  
5 particular PIN. It's not that hard to change a PIN.  
6 Somebody who is intent on stealing -- of doing identity  
7 theft, as you know in today's world, it's not that  
8 difficult to obtain information about an individual's  
9 accounts and records. And so if the individual can show  
10 that that person who claimed under their name wasn't  
11 authorized to use their PIN, they aren't liable for that  
12 payment.

13 The next section is primarily technical changes. If  
14 the individual doesn't respond to a request for  
15 information about a discharge from work, we're going to  
16 deny benefits based on misconduct unless the information  
17 is provided that the separation was for another reason.  
18 We could get that other information from the employer.  
19 But this is when the claimant doesn't respond.

20 The next section, again, it's cleanup language. But  
21 this is when a separation is considered a refusal of new  
22 work.

23 When an individual's employer changes --  
24 substantially changes somebody's job so that it's no  
25 longer considered -- basically, it's no longer considered

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1 the same job, it's considered new work, they completely  
2 changed the duties that the individual agreed to perform  
3 or they changed the terms and conditions of employment  
4 from those that are existing in their current contract or  
5 agreement at hire, when they do that, it's considered a  
6 layoff and an offer of new work. And the changes in here  
7 are just trying to clarify that language. This situation  
8 was fairly confusing for staff and for the public, and  
9 we're trying to just clean up the language. But that's  
10 essentially what the WAC is intended to do.

11 MR. RUDNICK: It looks like it basically comes down  
12 to what the argument is, what is and what is not  
13 substantial. Is there any directive or basis or  
14 Commissioner's decisions to kind of direct what is or is  
15 not substantial? Some employers do have some positions  
16 that kind of overlap or maybe they'll expand someone from,  
17 let's say, a retail position, they left the electronics  
18 department to go out to the floor and work on things in  
19 the aisles in the produce section. Do they get a very  
20 gray area of what is and what is not substantial?

21 MS. MYERS: It could be. The definition is on the  
22 top of page 15. It has to be something that's  
23 significant, either an amount, degree or impact on the  
24 individual as opposed to change that's relatively minor or

25 trivial. And just to change the working conditions is not

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1 substantial if the conditions prevailing after the change  
2 are those generally prevailing for other workers  
3 performing the same or similar work.

4 MR. RUDNICK: So it would be a comparison there if  
5 the change is not disparate, then they'll make a decision  
6 not to --

7 MS. MYERS: Right. I mean, we've had cases where  
8 somebody was downgraded from a manager to a receptionist.  
9 And obviously, that's a change -- a substantial change in  
10 working conditions where somebody got a significant pay  
11 cut, somebody got -- the employer could have eliminated  
12 healthcare benefits. Now, in today's economy, whether  
13 that would make sense to quit is another thing. But it's  
14 the conditions of work are so substantially changed,  
15 that's essentially a new job.

16 MR. TURNER: That brings up a question. I know we  
17 talked about reduction in wages on projects. Let's say  
18 guys were working on a project and the contractor says,  
19 "I'm now going to reduce your wages 'X' amount." Is there  
20 a percentage that the Department looks at? Or let's say  
21 that crew says, "Hey, we're not going to accept those  
22 terms. We're going to leave."

23 MS. MYERS: If it's 25 percent or more, then it's  
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24 automatically good cause to quit work. If it's less than  
25 that, then we look at, say, is it an offer of new work, is

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1 this substantially less favorable than other jobs in the  
2 community. In which case, we could consider it an offer  
3 of new work or a layoff and an offer of new work. It  
4 would depend on the individual circumstances. But if it's  
5 25 percent or more, then that is grounds for quitting  
6 work.

7 The next section on job-search requirements, the  
8 change is on the top of page 17. And that's basically  
9 saying that just posting your resume online, going to  
10 something like monster.com or craigslist, just posting  
11 your resume doesn't count as a job-search contact. They  
12 have to be applying for a specific job. And we get a lot  
13 of questions for this. And, actually, it was brought up  
14 by the state auditor, one of their performance reviews  
15 that they're doing with the different state agencies. So  
16 we're adding it into the rule.

17 MR. RUDNICK: Sometimes it comes up that a person  
18 repeatedly -- when the AAA issue comes up in, let's say, a  
19 hearing or adjudication, the person repeatedly applies to  
20 the same employer, maybe they have a number of positions  
21 -- entry-level positions three or four times a week, it's  
22 just the one employer. Are all of those considered to be

23 unique individual contacts?

24 MS. MYERS: Are they different jobs?

25 MR. RUDNICK: It could be. I've seen them where

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1 they're different -- they're different jobs or they  
2 continuously apply for maybe a list, you know, where an  
3 employer will keep a listing, an on-call listing just to  
4 go back to the registry, for example. The employer is  
5 just keeping a registry there for a potential position for  
6 an entry-level and he "reapplications" three times a week  
7 for the same registry.

8 MS. MYERS: I would say in that case that that's not  
9 individual employer contacts. If they're actually  
10 applying for three different jobs, then it would be. But  
11 if they're just signing up to be on a registry three times  
12 a week, then I would say, in my personal opinion, that  
13 would not be three employer contacts. That would be  
14 similar to somebody being on -- signing up to be on  
15 craigslist just to have their resume posted or going in  
16 three times to the same employer and saying, "Do you have  
17 a job opening?" "Do you have a job opening?" "Do you  
18 have a job opening?" That's not -- but if they apply,  
19 actually, for three specific different jobs, then I would  
20 say that probably constitutes three different job-search  
21 contacts.

22 MR. RUDNICK: Thank you.

23 MS. MYERS: The next one is what are the job-search  
24 requirements for individuals who work less than full-time.  
25 The only change that was made on that is individuals

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1 aren't -- partially unemployed individuals are individuals  
2 who are hired to work full-time and then whose weekly  
3 hours of work have been temporarily reduced by no more  
4 than 50 percent. We didn't have a number on that before  
5 and we had people who were reduced to fewer than ten hours  
6 a week and still wanting to say that they were partially  
7 unemployed, which to us didn't make sense because that  
8 excuses them from work search. So if they're working such  
9 a tiny amount of hours, that they should be looking for  
10 work. So it's saying that if their hours are reduced more  
11 than 50 percent, they are no longer exempt from work  
12 search. And that's the intent of that change.

13 On page 20, tracking job-search activities, again,  
14 that's meant to go along with some of the other job-search  
15 changes that I mentioned earlier.

16 If the application was made by newspaper, online or  
17 other methods where there is no direct employer contact,  
18 the individual needs to include documentation of the job  
19 applied for such as a job reference number with a copy of  
20 the job announcement or some kind of a confirmation notice

21 received after their application was submitted. Usually,  
22 if you submit an application online, you get some kind of  
23 a confirmation. If you apply to a blind ad in the  
24 newspaper, then you can attach a copy of that newspaper  
25 ad. Because normally what we do is we ask for the name of

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1 the person they spoke to when they are applying for work.  
2 But, obviously, if you're applying online, there's no name  
3 of a person. But this gives us some means of verifying.  
4 Because there are job searches subject to verification on  
5 a random basis.

6 MR. TURNER: Some employers that our people work for  
7 have a job line, and there is no person's name. It's just  
8 a job line, leave your information. And that's pretty  
9 much it.

10 MS. MYERS: And they get no confirmation or nothing?

11 MR. TURNER: No.

12 MS. MYERS: And they're applying for specific jobs or  
13 just getting in?

14 MR. TURNER: Yes.

15 MS. MYERS: Applying for jobs?

16 MR. TURNER: Yes. And the contractor will weed  
17 through them and call back who he feels might be a fit for  
18 that company. But some of them are saying, "Call in daily  
19 to the job line," and things like that.

20 MS. MYERS: Let me think about that one, get back to  
21 you, okay?

22 MR. SMITH: I can elaborate on that. Some cases that  
23 we've adjudicated in the past, if they -- they say, "Call  
24 in repeatedly." You should know to just put that one  
25 contact in. And just kind of a follow-up, we'll just

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1 consider one of those contacts for the week. They say you  
2 have to call in five times, we will take one.

3 In regards to the information, if they can gather  
4 whatever information they can get from the call line,  
5 let's say it's for this company, it's a job hotline and  
6 that's all the information that they have, they could just  
7 record as much as they can from there. If we have to  
8 verify, we could do our best to verify.

9 MS. MYERS: Thank you. We could call the number that  
10 they give and so on.

11 MR. TURNER: Because I know some employers record  
12 everything a little more diligently than others. Some  
13 just delete and move on. If they don't like the guy's  
14 message, you know, they'll delete that one and won't even  
15 have a record of it.

16 MS. MYERS: Well, when we do verification, if the  
17 employer has no record, doesn't keep any records, then  
18 we're going to presume that the job-search contact was

19 made. where we get them is an employer says, "No, I kept  
20 a record of everybody who applied, and this person  
21 didn't," or they have some other method or we look at it  
22 as a made-up company, which happens.

23 MR. TURNER: Doesn't surprise me.

24 MS. MYERS: The next rule starting on page 22 is  
25 simply a cleanup of language. It's just a cleanup of

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1 existing language. It's when somebody comes in to have  
2 their job-search review. They are pulled in on a random  
3 basis. It's about one of every 15 claimants, I believe,  
4 is called in at any given time to have their job search  
5 reviewed. And we take a look at what they've said is  
6 their contacts. They have to make a minimum of three a  
7 week except for when we're in an extended benefits period,  
8 then they have to make a minimum of at least four. And  
9 then we look at not just the contacts they've made, make  
10 sure that they're meeting that requirement, make sure that  
11 they're filling out their logs correctly, provide them  
12 some guidance or some referrals to other jobs if there's  
13 any available, give them tips on how to improve their  
14 job-search activities and so on.

15 And that's also the point where we verify that they  
16 are authorized to work in the country. And that's where  
17 they have to provide -- there's a list of information

18 that's accepted by the Department of Homeland Security as  
19 proof of authorization to work. And we've updated that  
20 list to comply with their current requirements. Because  
21 they do have to be -- to be paid unemployment benefits,  
22 they have to be authorized to work in the United States.

23 MR. RUDNICK: That clears up my mind. I've had  
24 questions on that, why are we paying unemployment to  
25 people that are not legally documented to work in this

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1 country.

2 MS. MYERS: We should not have -- that should not  
3 happen. In fact, we have a new process in place. When  
4 somebody applies for unemployment benefits, we do an  
5 overnight cross-match with the Social Security  
6 Administration, and we match up the data that they give  
7 us. And it has to match their first name, middle initial,  
8 last name, date of birth. And is there one other thing?  
9 I can't remember. And Social Security number. It has to  
10 match. And if there's any differences, we don't pay  
11 benefits. We send out a notice to the individual saying  
12 that they have to go to the Social Security office and get  
13 a copy of their Social Security card and provide us a copy  
14 of that, provide a notarized statement that that person  
15 has -- that the notary has seen that document. Because  
16 the number of potential individuals who draw unemployment

17 benefits that are not legally authorized in this country  
18 we believe has dropped to almost nil because of the  
19 overnight cross-match that we do.

20 MR. TURNER: So you e-verify.

21 MS. MYERS: Basically, it's actually more effective  
22 than e-verify for our purpose. Because e-verify is a call  
23 to the -- they do a cross-check, but I don't think they  
24 check the number of data elements that we do.

25 The next section, all we did on the disqualification

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1 of student section is we took out the definition of  
2 preponderance of evidence because we made it its own WAC.  
3 It's one of the new WAC's because it applies not to just  
4 this section, it applies to all sections. So that's the  
5 only change we made.

6 The next section on page 27, can I receive  
7 unemployment benefits while I'm in training. The only  
8 substantive change there is that the training must be  
9 full-time as defined by the training facility but subject  
10 to the discretion of the Commissioner. So if the school  
11 says two hours a week is full-time training, that really  
12 doesn't pass a straight-face test, and so we're going to  
13 say "no." Even though the school says it's full-time,  
14 it's not really according to our discretion.

15 MR. TURNER: In the past, we have apprenticeship

16 programs that are state registered in the carpentry trade.  
17 Some of the apprentices are having some problems when they  
18 file because they can be paid their unemployment benefits  
19 while they're in training because it's a full-time,  
20 40-hour deal. Does the Department look at anything for  
21 their online filing to -- because usually, if they click  
22 one box, it automatically --

23 MS. MYERS: Yes, we are. We're trying to make some  
24 changes to the -- we've had a service request submitted  
25 that somebody can -- instead of checking if they're laid

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1 off or they quit or whatever, they can mark a box saying  
2 they've gone into apprenticeship training. That's just  
3 backlogged with our other service request. But yes, we  
4 are looking to making a change.

5 And the last two rules, they're just very technical  
6 changes. The last one is correcting a statutory -- the  
7 next to the last one is correcting a statutory citation  
8 which is wrong in there. That's on the top of page 29.  
9 And the last one is just a section on whose businesses  
10 with a particular tax rate aren't eligible for  
11 participation in the shared-work program.

12

13 Rule-Making Process: What's Next

14

15 MS. MYERS: And that is the end of the rules we are  
16 looking at. I thank you all for attending. What we're  
17 going to do is take the comments we received today and on  
18 Tuesday. If any of you think of additional comments that  
19 you want to get in, if you can do it in the next couple of  
20 weeks, we'll certainly consider them.

21 MR. TURNER: The process, when will these become  
22 effective?

23 MS. MYERS: What we have to do is consider the  
24 comments that we've received, go back, make some changes,  
25 any changes that we feel are necessary to try to clarify

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1 these. We'll give you a couple weeks to submit any  
2 additional written comments while we're making these  
3 changes. We're hoping that we'll be able to have a  
4 hearing sometime towards the end of January or possibly  
5 early February. We have to -- when we publish the hearing  
6 date in the State Register, we have to give at least  
7 20 days' notice, so it depends on how soon we can get this  
8 filed. And then after the hearing, we file the final  
9 rules and they're effective 31 days after that. So we're  
10 looking at some time in probably March that these rules  
11 will be effective.

12 MR. MILICI: Until then, the existing rules apply?

13 MS. MYERS: Until then, the existing rules apply,

14 yes.

15 MR. MILICI: I had a call from a contractor a month  
16 ago, and he wanted to know one of the projects he's going  
17 to be working on, and he's a union signatory, has stimulus  
18 money from the ARRA program. They are signatory and they  
19 get their employees from the carpenters union. That's  
20 usually they hire their own or they rehire their own.  
21 They're not obligated to go outside of that and go to  
22 workSource unless we can't meet the call. I'm sure that  
23 we can. But he wanted to know, were they required to go  
24 to workSource first before they went to the union under  
25 the stimulus program.

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1 MS. MYERS: No. They just meet their union dispatch  
2 requirements. There's no requirement they go to  
3 workSource first, union members, no. And actually, nobody  
4 has to go to workSource first.

5 MR. MILICI: For their service.

6 MS. MYERS: For service. Our services at workSource  
7 offices are there and they're available. We encourage  
8 people to use them but they're not mandatory.

9 MR. MILICI: Our contractors are obliged to go to us  
10 first. Should we fail to provide those services, then  
11 they go to alternate services. So though stimulus money  
12 is provided for this contractor, he is not obliged to go

13 to workSource first in order to accommodate some sort of  
14 federal stimulus grant that's involved, he goes to the  
15 union first.

16 MS. MYERS: Uh-huh.

17 MR. MILICI: Thank you.

18 MS. MYERS: That said, we'll go ahead and adjourn the  
19 meeting. And again, thank you all for attending.

(whereupon, proceedings  
adjourned at 12:05 p.m.)

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