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Washington State Paid Medical And Family Leave Update

February 27, 2020

Welcome!

- We will begin at 2pm
- There will be no sound until we begin the Webinar
- We have muted your audio from our end, but we would appreciate it if you would also mute, just in case
- You will be able to submit questions during the webinar by using the “chat box” located at the bottom of your screen
- Thank you for joining us!

Agenda



Overview



Intermittent
Leave



Supplemental
Benefits



How to apply /
notices / benefits



Overview

Overview

Insurance provided by the State of Washington through the Employment Security Division (ESD)



- Funded by employer and employee taxes (payments began January 1, 2019)
 - ER reports quarterly hours worked and total earnings
- Includes paid family and medical leave (PFML)
- Benefits started January 1, 2020
- Applies to all employees working in Washington
 - Union employee with a CBA exempted until CBA expires or is renegotiated

Benefits

Serious illness is
“at the discretion of the
healthcare provider that
the patient meets the
state’s definition”

Medical Leave

- Employee’s own serious illness

Family Leave

- To care for a seriously ill family member
 - Definition of family is not the same as FMLA
 - Spouse/domestic partner, child (any age), parent (or spouse’s parents), grandchild, grandparent (or spouse’s grandparents), sibling
- Bonding time for the birth or adoption of a child
 - Must be taken within one year of birth or placement
- Some military connected events
 - Family member about to be deployed, or returning from deployment

Benefits

How soon are benefits provided?

- After seven days
 - State is calling this the “waiting week”
 - Week starts on Sunday
- Immediately for birth or placement of a child



How long are benefits provided?

- In a 52 consecutive calendar week period:
 - 12 weeks of family or medical leave
 - 16 weeks for combined family and medical
 - Additional two weeks for pregnancy-related disability

Concurrent with FMLA

Benefits

Benefit Amount

- Minimum \$100 and maximum \$1,000 per week
- Formula based on earnings (total compensation)



Job protection – Criteria is the same as FMLA

- Only for employers with 50 or more employees
 - Like FMLA, the employee must have worked at least 1,250 hours in the 12 months immediately preceding the leave



Supplemental Benefits

Supplemental Benefits

How to use accumulated sick, vacation, personal days, or combined paid time off (PTO)

- You can decide to allow employees to use banked time to supplement the PFML; but you don't have to
- If you do, then you have two options:
 1. Use before the PFML
 2. Use to "top up" the PFML
- Use of the supplemental benefits is always the choice of the employee



Supplemental Benefits

Consequences

- Use PTO before PFML
 - Employee can use their accumulated paid time, and once exhausted they can *then* apply for and use the PFML
 - The two benefit types **stack** – PTO, then a full PFML benefit
 - If the employee meets the criteria for FMLA, the PFML benefit will also be job protected
 - Federal FMLA is 12 weeks and includes continuing health insurance benefits
 - » If the FMLA and PFML overlap by even one day, there is a **proposed rule** that you will have to continue health coverage during the PFML period.

Supplemental Benefits

Consequences

- Use PTO before PFML
 - Continuation of Health Benefits
 - Currently for the FMLA period – this is what is in force right now
 - Proposed rules for the PFML require the employer to continue health benefits if the FMLA and PFML overlap by even one day
 - » Health benefits would need to be continued for the entire PFML benefit period
 - » They must be maintained “as if the employee had continued to work from the date family or medical leave commenced” until they return to work or exhaust PFML benefits
 - » **The employee would continue to be responsible for their share of the cost**
 - These are proposed rules, so they are not in place right now
 - Comment period now, Public Hearing 5/4/2020, Effective 6/11/2020
 - PS&F will monitor & work with our medical/stop loss carriers

Supplemental Benefits

Consequences

- Use PTO to top up the PFML
 - Employee can use their accumulated paid time to increase their PFML benefit to 100% of pay
 - PFML is based on total compensation
 - » Highest two of the last four quarters worked and as reported by the employer(s)
 - PTO pay is based on base pay, so if topping up, will only top up to base pay
 - » PTO is usually a bank of time; topping up is dollars

Supplemental Benefits

Taxation of PFML Benefits

- PFML benefits are currently not taxed
 - IRS wants to make a single ruling for all the states who either have passed medical and family leave laws or who are considering them
 - PFML website states, "benefit payments may be taxable. Consult a tax professional"
 - Not sure when we will know one way or the other, but for now no taxes are being withheld

Supplemental Benefits

If allowed, you must be very clear with your employees that you are providing a supplemental benefit and not paid time off

- When a claim is filed, the employee will need to check the “supplemental benefits” box
- The State will not pay if the paid time is linked to hours worked, so supplemental benefits paid cannot be reported to the State as hours worked or as pay
- OK to use accumulated PTO for the seven day “waiting week” and that is not considered a supplemental benefit

Supplemental Benefits/STD

What about existing short term disability plans for medical leave?

- The STD benefit will offset any benefits from the PFML
- The state plan benefit may be more generous, so the STD plan will pay nothing
 - If you allow employees to top up, the STD plan should offset both the PFML and the top up amount
- STD benefits are usually base pay; PFML is total compensation
- STD benefit recur; PFML are a bank of weeks in a rolling 52 week period
 - STD may pay longer than the PFML for those with 24-week plans

Supplemental Benefits/STD

How will you or the STD carrier know what to offset from the PFML?

- The employee should receive something from the State approving the leave and providing the weekly benefit amount
- We think you will too, and someday there will be an employer portal where you can check
- It takes time for the State to make their decision and send the notices to the employee/employer



Intermittent Leave

Intermittent Leave

Both medical and family leave can be taken intermittently

- In a minimum of eight hour increments
 - That's one day for full-time employees, but may be more than one day for people working part-time
- Weekly claim filing is how the State will know that the leave is intermittent



Intermittent Leave

Maternity/bonding-related leaves

- Medical leave (for the period of disability of the mother) up to 12 weeks
- Family leave or bonding leave up to 12 weeks
- Combined for the mother = 16 weeks (could be 18)
 - Two extra weeks are provided in the event of medical complications for the Mom or the baby
- Leave must be taken during the first year
 - Those who had babies in 2019 are eligible for paid leave in 2020 until the baby's first birthday
 - All leaves for bonding must be taken during the 1st year



How to apply/notices/benefits

How to apply?

Employee must give you 30 days notice of their intent to take leave if the leave is not an emergency



- Should be in writing; text messages, emails are OK
- If an emergency, then as soon as possible

Apply online or by paper

- Create an account
- Can't apply until the start of the leave; can set up account and get ready prior

How to apply?

For medical and non-bonding family leaves, there must be a doctor's certification

- Use the form provided by the State OR
- If also applying for FMLA, it's easiest to use the FMLA medical certification form
 - It's the one form the State will accept

No documentation required for birth, adoption, etc. unless the State asks

Once the claim has been approved, the State will require a weekly filing

- Determination letters will come by mail

How to apply?

Benefit payments

- There is a calculator on the website
- If apply by paper, payment will be by pre-paid debit card
- If apply online, can also choose direct deposit

The State is way behind in processing claims

- Far more volume than they expected
- Supposed to be 14 days to approve and another 14 to pay
 - Currently may have approval in 30 days, could be longer

How to apply?

What claim notices will the employer receive?

- Once application is made
 - You have 18 days to contest the claim
- Once approved or denied the employer will be notified
 - Currently coming by mail
 - Eventually there will be an employer portal

How to apply?

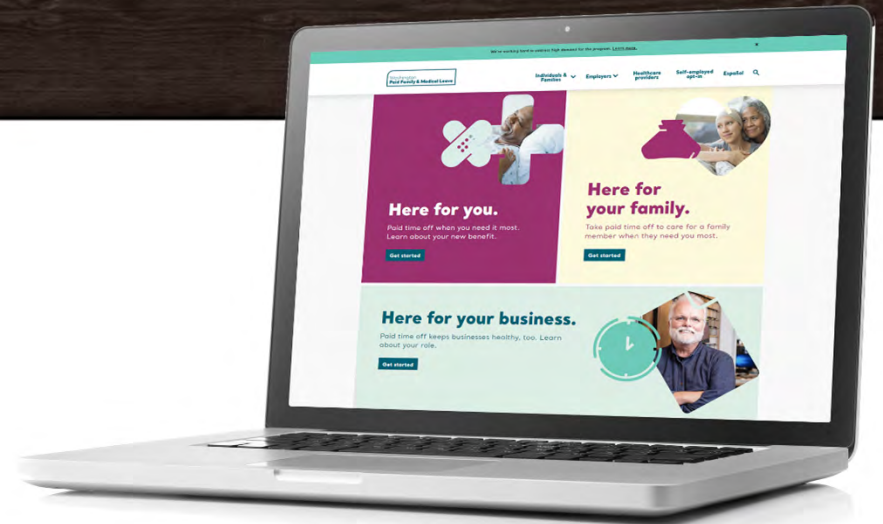
What notice does the employer have to provide the employee?

- You must provide notice of PFML rights to your employee the later of:
 - Five business days after an employee's seventh consecutive day of absence due to family or medical leave, OR
 - Five business days after you are aware that an employee is off due to family or medical leave
- Be sure the PFML notice is posted where you normally post your other employment related notices
- Both include your Unique Business Identifier (UBI) number – this is how the State locates your employee in their system

Questions?

Use the website!

- www.paidleave.wa.gov
- Apply for benefits, FAQ's, check lists, etc.
- Managed by employment security division (ESD)
 - Same agency that handles workers' compensation



If you have specific questions, contact your Parker, Smith & Feek account team.

Thank you!



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