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Washington Enacts Paid Family and Medical Leave

On July 5, 2017, Governor Jay Inslee signed [Senate Bill 5975](#) into law, providing paid family and medical leave benefits to eligible workers, **effective Jan. 1, 2020**. Key aspects of this leave program, which will be administered by a state agency, are as follows:

- Virtually all Washington employers are covered under the program.
- Employees are eligible for benefits after 820 hours of employment.
- Benefits are paid out at 90% of an employee's average weekly wage, capped at \$1,000 per week.
- January 1, 2019: Payroll deductions to fund the program begin.
- January 1, 2020: Eligible employees may begin receiving paid family and medical leave benefits.

ACTION STEPS

Employers should review existing paid time off policies to determine whether they may opt out of the new law. Employers should also review other company policies, such as attendance policies, to determine whether they should be updated. Employers will also have to understand how the new law interacts with other laws, including the statewide paid sick leave law that goes into effect Jan. 1, 2018, and the federal Family and Medical Leave Act (FMLA).

GENERAL REQUIREMENTS

Covered Employers

Under the law, **all Washington employers** (regardless of size) are required to comply with the paid family and medical leave requirements.

Employers with **fewer than 50 employees** are not required to pay the employer portion of the premium to fund the program. However, if an employer with fewer than 50 employees voluntarily pays the employer premium, the employer is eligible for grant assistance. More information on the grant assistance program is provided below.

All Washington employers will be required to comply with the paid family and medical leave law. However, businesses with fewer than 50 employees are not required to pay the employer portion of the premium.

Eligible Employees

Any employee who **works at least 820 hours** during the "qualifying period" is eligible for paid family and medical leave benefits. The qualifying period is defined as the **first four of the last five completed calendar quarters** or, if eligibility is not established, the last four completed calendar quarters immediately before the employee's application for leave.

In addition, self-employed individuals, including sole-proprietors, independent contractors or partners, may opt into the paid family and medical leave program by paying 100 percent of the required premium.

Duration of Paid Family and Medical Leave

Beginning Jan. 1, 2020, eligible workers may start receiving paid family and medical leave benefits.



The paid family and medical leave program provides the following leave amounts **during a consecutive 52-week period:**

Family Leave	Up to 12 weeks
Medical Leave	Up to 12 weeks (14 weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity)
Combined Family/Medical Leave	Up to 16 weeks (18 weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity)

The [Washington Employment Security Department](#) (Department) will process applications for paid family and medical leave benefits, as well as administer payments under the program.

Permitted Use of Paid Family and Medical Leave

Paid Family Leave

Eligible employees can take paid family leave for any of the following reasons:

1	To participate in providing care, including physical or psychological care, for a family member of the employee due to the family member's serious health condition
2	To bond with the employee's child during the first 12 months after the child's birth (or the first 12 months after the placement of a child under the age of 18 with the employee)
3	For a qualifying exigency as permitted under the federal FMLA

Under the law, a family member for whom an employee may take paid family leave includes:

- A child of any age, including a biological child, adopted or foster child, a stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of dependency status;
- A parent, including a biological, adoptive, de facto or foster parent, stepparent, or legal guardian of the employee or person who stood in loco parentis when the employee was a child;
- The employee's spouse or registered domestic partner; and
- Grandparents, grandchildren or siblings of the employee.

Paid Medical Leave

An eligible employee can take paid medical leave due to the employee's own serious health condition.

Employee Notification Requirements

If an employee is taking paid leave for the birth or placement of a child, and the need for leave is foreseeable, the employee must provide his or her employer with at least 30 days' advance notice of the intention to take leave. However, if the employee's need for leave due to the birth or placement of a child is less than 30 days away, the employee must provide the employer with notice as soon as possible.

Where an employee's need for leave is foreseeable due to a family member's serious health condition, or the employee's own serious health condition is based on planned medical treatment, the employee:

- Must make a reasonable effort to schedule the treatment so that it does not unduly disrupt the employer's operations; and



- Provide his or her employer with at least 30 days' advance notice of his or her intention to take family or medical leave. If the date of the treatment requires the employee's leave to begin in less than 30 days, the employee must provide this notice as soon as possible.

Employer Notification Requirements

An employer is required to provide a **written notice** to an employee of his or her rights under the paid family and medical leave program whenever an eligible employee is absent from work to provide family leave, or takes medical leave for more than seven consecutive days. This notice must be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family or medical leave, or within five business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is later.

The Department intends to provide a model notice that employers may use to fulfill this written notice requirement. Employers must also conspicuously post a notice in the workplace summarizing the paid family and medical leave program. The Department intends to create a model poster to fulfill this requirement as well.

Amount of Family and Medical Leave Benefits

Under the law, an eligible employee may receive up to 90 percent of his or her average weekly wage (AWW), based on the employee's AWW in comparison to the state AWW, up to the maximum weekly benefit, as follows:

- An employee whose AWW is **50 percent or less** than the state AWW may receive 90 percent of his or her AWW.
- An employee whose AWW is **greater than 50 percent** of the state AWW average weekly wage will receive a weekly benefit that is the sum of 90

percent of the employee's average weekly wage up to 50 percent of the state average weekly wage and 50 percent of the employee's average weekly wage that is greater than 50 percent of the state average weekly wage.

In any case, the **maximum weekly benefit for paid family and medical leave is \$1,000**. The Commissioner will adjust the weekly maximum benefit amount annually by Sept. 30 (beginning Sept. 30, 2020). The adjusted weekly benefit maximum is then effective Jan. 1 of the following year.

Eligible employees will begin receiving payment of family and medical leave benefits following a **seven-day waiting period**. In other words, benefits are not payable during the first seven calendar days of an employee's leave. However, there is **no waiting period** to receive paid family and medical leave benefits when leave is taken for the birth or placement of a child.

PROGRAM FUNDING

The paid family and medical leave program will be funded with employer and employee payroll contributions. Employers are responsible for collecting the premiums from their employees through payroll deductions and remitting the premium amounts to the Department. An employer that fails to pay required premiums will be subject to a penalty equal to the amount of premiums owed plus interest, in addition to payment of owed premiums and interest.

Payroll deductions will become **effective Jan. 1, 2019**. Beginning Jan. 1, 2019, through Dec. 31, 2020, the **total premium** amount is **0.4 percent of an employee's wages**. Two-thirds of the premium amount will be allocated to medical leave benefits and one-third will be allocated to family leave benefits. Employers may deduct 100 percent of the premium for family leave benefits and 45 percent of



the premium for medical leave benefits from employees' wages. Employers would be required to pay the remaining 55 percent of medical leave premiums.

Employers with **fewer than 50 employees** employed in the state are not required to pay the employer portion of premiums for family and medical leave. However, if an employer with fewer than 50 employees chooses to pay the premiums, the employer will be eligible for grant assistance, as described below.

Grant Assistance

Employers with **150 or fewer employers** (including employers with fewer than 50 employees that are assessed premiums) may also apply for a grant from the Department to assist with the costs of paid family and medical leave benefits. These grants would provide the following assistance:

\$3,000 Grant

An eligible small employer may receive a \$3,000 grant if the employer hires a temporary worker to replace an employee who is on family or medical leave for seven or more days.

\$1,000 Grant

An eligible small employer may receive a grant up to \$1,000 as reimbursement for any significant additional wage-related costs that are attributable to an employee's family or medical leave.

Grant Limits

An eligible small employer may only receive one of the above types of grant assistance, not both. Also, an eligible small employer may not apply for a grant more than 10 times per calendar year, or more than once for each employee on family or medical leave.

To be eligible for a grant, the employer must provide the Department with written documentation showing that a temporary worker was hired or that significant wage-related costs were incurred due to an employee's use of family or medical leave.

VOLUNTARY PLANS

Employers have the option of implementing a voluntary plan in order to opt out of the state's paid family leave program, paid medical leave program or both. The benefits provided under any voluntary employer plan must be equivalent to the benefits provided under the paid family and medical leave law, including the duration of leave, the benefits provided and the employee eligibility requirements.

In addition, an employer **must apply to the Department** for approval of any voluntary employer plan. The application fee for approval of a voluntary plan is \$250.

INTERACTION WITH EXISTING LEAVE LAWS

The paid family and medical leave law specifically prevents any localities from enacting any paid family or medical leave insurance program that alters or amends the requirements under the statewide law for private employers.

However, the paid family and medical leave law does not specifically address how it interacts with existing laws, including the statewide paid sick leave law that takes effect Jan. 1, 2018. However, the law does provide that an employer may allow an employee who has accrued vacation, sick or other paid time off to choose whether he or she wants to use their paid time off **or** receive paid family or medical leave benefits and not use their available paid time off. Therefore, it appears an employee may use available paid time off **instead of** paid family or medical leave benefits, but may not receive both concurrently.



Job Restoration and Group Health Plan Benefits

Employees are entitled to be reinstated to their original position, or an equivalent position upon return from family or medical leave. As a condition of job reinstatement for an employee who has taken medical leave, employers may have a uniformly applied practice or policy that requires each employee to receive certification from the employee's health care provider that the employee is able to return to work.

Also, the taking of paid family and medical leave may not affect an employee's employment benefits as accrued prior to the employee's leave. An employer must maintain an employee's existing health benefits during any paid family and medical leave if the employee's leave is covered by the federal FMLA.

Under the paid family and medical leave law, the job-protection rights listed above only apply to employees who:

- Work for an employer with 50 or more employees;
- Worked for the employer for at least 12 months; and
- Worked at least 1,250 hours during the 12-month period prior to taking leave.

Employee Protections

Under the paid family and medical leave law, an employer is prohibited from:

- Interfering with, restraining or denying an employee's exercise of his or her rights under the paid family and medical leave law;
- Discharging or in any way discriminating against an employee for opposing any practice that is unlawful under the law
- Discharging or discriminating against an employee for filing a complaint or cooperating with any proceedings related to rights under the law.

ADDITIONAL INFORMATION

The Department is expected to issue guidance on the state's new paid family and medical leave program in the future. This guidance will likely provide employers with clarification on their responsibilities.

SUMMARY

- Family and medical leave benefits will be funded with employee and employer contributions.
- Employers with fewer than 50 employees may opt out of employer contributions.
- Workers are limited to a total 16 weeks and female employees affected by pregnancy are limited to 18 weeks of paid family and medical leave during a 52-week period.

As always, should you have any questions, please contact your [Parker, Smith & Feek Benefits Team](#). While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept liability for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it.