

COORDINATION OF LEAVE RELEVANT PROVISIONS IN FEDERAL AND STATE LAWS

State Family Care Law RCW 49.12.265 - .295

Silent.

Federal Family and Medical Leave Act 29 U.S.C. §§ 2601-2654 29 C.F.R. Part 825

29 U.S.C. § 2651 - Effect on other laws

(a) Federal and State antidiscrimination laws. Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) State and local laws. Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

29 CFR 825.701 –Do State laws providing family and medical leave still apply?

(a) Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. The Department of Labor will not, however, enforce State family or medical leave laws, and States may not enforce the FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws. Examples of the interaction between FMLA and State laws include:

(1) If State law provides 16 weeks of leave entitlement over two years, an employee would be entitled to take 16 weeks one year under State law and 12 weeks the next year under FMLA. Health benefits maintenance under FMLA would be applicable only to the first 12 weeks of leave entitlement each year. If the employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year under FMLA (not 16 weeks). An employee would not be entitled to 28 weeks in one year.

(2) If State law provides half-pay for employees temporarily disabled because of pregnancy for six weeks, the employee would be entitled to an additional six weeks of unpaid FMLA leave (or accrued paid leave).

(3) A shorter notice period under State law must be allowed by the employer unless an employer has already provided, or the employee is requesting, more leave than required under State law.

(4) If State law provides for only one medical certification, no additional certifications may be required by the employer unless the employer has already provided, or the employee is requesting, more leave than required under State law.

(5) If State law provides six weeks of leave, which may include leave to care for a seriously-ill grandparent or a "spouse equivalent," and leave was used for that purpose, the employee is still entitled to 12 weeks of FMLA leave, as the leave used was provided for a purpose not covered by FMLA. If FMLA leave is used first for a purpose also provided under State law, and State leave has thereby been exhausted, the employer would not be required to provide additional leave to care for the grandparent or "spouse equivalent."

(6) If State law prohibits mandatory leave beyond the actual period of pregnancy disability, an instructional employee of an educational agency subject to special FMLA rules may not be required to remain on leave until the end of the academic term, as permitted by FMLA under certain circumstances. (See Subpart F of this part.)

State Family Leave Law

Chapter 49.78 RCW

RCW 49.78.360 –Effect on other laws.

Nothing in this chapter shall be construed: (1) To modify or affect any state or local law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability; or (2) to supersede any provision of any local law that provides greater family or medical leave rights than the rights established under this chapter.

RCW 49.78.390 - Relationship to federal family and medical leave act.

(1) Leave under this chapter and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

State Pregnancy Discrimination
RCW 49.60.180; WAC 162-30-020(4)

WAC 162-30-020(4)(d) –Pregnancy, childbirth, and pregnancy related conditions; leave policies.

(d) Employers may be required to provide family medical leave, in addition to leave under this chapter. Please see appropriate federal and state family and medical leave laws and regulations.

State Family Leave Insurance
Chapter 49.86 RCW

RCW 49.86.140 - Coordination of leave. (Effective July 1, 2008.)

(1)(a) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) or under chapter 49.78 RCW.

(b) An employer may require that leave taken under this chapter be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or employer policy, as applicable, for the birth or placement of a child. The employer must give individuals in its employ written notice of this requirement.

(2)(a) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for the birth or placement of a child.

(b) An individual's right to leave under this chapter may not be diminished by a collective bargaining agreement entered into or renewed or an employer policy adopted or retained after July 1, 2008. Any agreement by an individual to waive his or her rights under this chapter is void as against public policy.

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