



A Legislator's Guide to Washington's Paid Family and Medical Leave Program

Substitute Senate Bill 5975 - Chapter 5, Laws of 2017, Third Special Session.
Revised Code of Washington - Chapter 50A.04.

Brief Summary: *The legislation creates and implements a paid family and medical leave program for all employees in the state. The program is funded by premiums paid by employees and many employers and is administered by the Employment Security Department (ESD). Premiums will be assessed beginning January 1, 2019, and benefit claims begin on January 1, 2020.*

Purposes of Leave. Paid **family leave** benefits are provided: (1) when an employee is bonding after the birth or placement of a child, under the age of eighteen; (2) because of a family member's serious health condition; or (3) for a military exigency.

- Family member means the employee's child, grandchild, grandparent, parent, parent-in-law, sibling, and spouse.
- Child means a biological, adopted, foster, stepchild, or child to whom the employee stands in loco parentis and other specified relationships.
- A military exigency relates to leave for short-notice deployments, military events, certain childcare and school activities for a military member's child, post-deployment activities, and other specified activities.

Paid **medical leave** benefits are provided for an employee's own serious health condition. "Serious health condition" has the same definition as in the federal Family and Medical Leave Act (FMLA) and its regulations. A brief summary of the FMLA can be found at the end of this document.

Eligibility. Employees are eligible for family and medical leave benefits after working for at least 820 hours in employment during the qualifying period. The "qualifying period" generally means the first four of the last five completed calendar quarters. To be eligible to receive benefits, an employee must file a claim for benefits, authorize the limited disclosure of certain information, notify the employer, and for a serious health condition or military exigency meet certain documentation requirements regarding leave.

Tribes and self-employed individuals, including independent contractors, may opt-in to the program. Self-employed individuals are eligible for benefits once they have worked 820 hours, after electing coverage, and must pay premiums for a minimum of three years.

Duration of Leave. The maximum duration of benefits is 12 times the typical workweek hours during a 52-week period for each of family leave and medical leave. A qualifying employee is entitled to 12 weeks of family leave and 12 weeks of medical leave.

With one exception, the combined total of family and medical leave allowed during a 12-month period is capped at 16 weeks. An additional two weeks of leave may be used if the employee has a serious health condition with a pregnancy that results in incapacity, for a combined total of 18 weeks.

Leave benefits are paid without a waiting period for the birth or placement of a child. All other paid leave has a 7-day waiting period.

An employer may allow an employee to use accrued vacation, sick, or other paid time off, or receive the benefits under the program.

Amount of Benefit. The benefit amount is a percentage of the individual's average weekly wage (AWW) during the two highest quarters in the qualifying period, calculated as follows:

- if the individual's AWW is 50% or less than the state AWW (\$1,133 for 2016), the benefit is 90% of the individual's AWW; or
- if the individual's AWW is more than 50% of the state AWW, the benefit is 90% of the individual's AWW up to 50% of the state AWW, plus 50% of the individual's AWW that is greater than the state AWW.

The maximum weekly benefit amount is \$1,000. The maximum benefit is adjusted annually, to 90% of the state AWW, beginning on January 1, 2021.

The minimum weekly benefit is not less than \$100 per week, except that if the employee's AWW at the time of the leave is less than \$100 per week, the weekly benefit is the employee's full wage.

Premiums. The initial premium rate is set at 0.4% of wages beginning on January 1, 2019. The amount of wages subject to a premium assessment is capped at the maximum wages subject to social security tax (\$128,400 for 2018).

The premium rate will be reviewed for annual adjustments under a specified formula and a solvency surcharge will be assessed if the account balance ratio is at or below a specified level.

The medical leave premium rate is 2/3 of the total premium rate and the family leave premium is 1/3 of the total premium rate.

Employers may deduct from the employees' wages:

- 100% of the premiums due for the family leave portion; and
- up to 45% of the premiums due for the medical leave portion. The employer is responsible for 55% of the medical leave premium.

An employer may elect to pay all of the premiums.

Self-employed individuals who elect coverage pay only the employee share of the premiums (100% of the family leave and 45% of the medical leave portions of the premiums).

Employers with 50 or fewer employees are exempt from paying the employer share of the premiums.

A conditional waiver for payment of premiums is provided for an employee based out of state who is not expected to be eligible for benefits.

Job Protection. An employee returning from leave is entitled to be restored to the same or equivalent job under the same standards regarding employer size and hours of employment as specified in the FMLA. This applies to an employee of an employer with 50 or more employees, who has worked for the current employer for at least 12 months and for at least 1250 hours during the preceding 12 months, with an exception for certain highest paid employees of the employer.

Voluntary Plans. An employer may opt-out of either the state program for family leave or medical leave, or both, by having a voluntary plan that meets specified standards, including:

- the benefits afforded to the employees must be at least equivalent to the benefits the employees are entitled to as part of the state's family and medical leave program, including but not limited to the duration of leave.
- the employer must offer at least one-half of the length of leave as provided in the act with pay and provide a monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive as part of the state program;
- the payroll deductions may not exceed the deduction for an employee under the state program;
- employees are covered after working the 820 hours in the qualifying period and at least 340 hours for the current voluntary plan employer; and
- the employee's job is protected if the employee has worked for at least 9 months and 965 hours during the preceding 12 months for the employer.

ESD's fee for reviewing each voluntary plan is set at \$250. ESD must conduct a review of the related administrative expenses incurred during the first three years, adjust the fee as needed, and report to the Legislature.

Additional provisions are included regarding successor employers, penalties, employee transitions between voluntary plans and the state plan, and termination of plans.

Local Governments. A city, code city, town, county, or other political subdivision may not enact a charter, ordinance, regulation, rule, or resolution that: (1) creates a paid family or medical leave insurance program that alters or amends the program for a private employer; (2) provides for local enforcement of the program; or (3) requires private employers to supplement the duration of leave or the benefits provided under the program.

Local governments may provide greater benefits to their employees.

Administration. ESD administers the program and is granted rulemaking authority. ESD must conduct an outreach program and address items such as the application process, record-keeping, appeals, and other administrative matters.

Penalties. An employee who knowingly and willfully makes false statements or representations is disqualified for benefits for a period of time and is subject to monetary penalties. The penalties increase for repeated violations. Employers found by ESD to have violated the provisions concerning voluntary plans are subject to a schedule of increasing monetary penalties. ESD may terminate a voluntary plan if there is a risk that benefits will not be paid or for other good cause. Employers who willfully fail to make reports or pay premiums are subject to escalating penalties. Appeal and collection provisions are provided.

Advisory Committee. An advisory committee is created, consisting of four members each representing employees and employers, and an ESD representative and the ombuds as ex officio members. The committee may comment on rules, policies, and other specified matters and study issues as the committee determines.

Small Business Grants. Employers with 150 or fewer employees or employers with 50 or fewer employees who opt to pay all premiums are eligible for grants of \$3,000, if the employer hires a temporary worker to replace an employee on leave for seven or more days; or up to \$1,000 for reimbursement for significant additional wage-related costs related to an employee's leave.

An employer who receives a grant for the wage-related costs may receive an additional grant of up to \$2,000 in certain circumstances. An employer may not receive more than ten grants per year and only one for each employee on leave.

Once an employer receives a grant, it must continue to pay all of the employer's portion of the premiums for at least three years.

Unemployment Benefits Charges Relief. An employer may request relief of unemployment benefits charges that result from paying unemployment benefits to a temporary replacement employee who worked for the employer for 20 weeks or less and who was laid off due to the return of an employee receiving family and medical benefits. The amount of the relief from unemployment benefits charges will be transferred to the unemployment trust fund from the family and medical leave insurance account.

Ombuds. The Governor must appoint an ombuds within the ESD to be available to all employers and employees. The ombuds, among other duties, must provide information to employers and employees on family and medical leave, act as an advocate for employers and employees in their dealings in with ESD, and facilitate resolution of complaints. The ombuds may conduct employee surveys.

Collective Bargaining Agreements. The paid family and medical leave provisions do not apply to parties covered by collective bargaining agreements in effect before October 19, 2017, unless and until the agreements expire, are reopened, or are renegotiated.

Health Benefits. If required by the FMLA (see description below), an employer, including employers with a voluntary plan, must maintain existing health benefits of the employee during the employee's leave. If the cost of the benefits are shared, each remains responsible for their share.

Concurrent With FMLA. Unless otherwise expressly permitted by the employer, leave taken under the paid family and medical leave program must be taken concurrently with any leave taken under the FMLA.

Retaliation. Employers are prohibited from denying the employee's rights or from discriminating against an employee for exercising the rights under the act. It is unlawful for any person to discharge or discriminate against an employee for filing a complaint or for taking other specified actions. ESD must investigate complaints. The potential damages for violations are specified, including double damages for a willful violation.

Reports. ESD must submit annual reports to the Legislature beginning in 2020 on the program, including participation, premium rates, fund balances, benefits paid, demographic information on participants, voluntary plan participation, outreach, and small business assistance.

Other Leave Programs:

- **Federal Family and Medical Leave (FMLA) - (unpaid leave).** Federal law grants certain employees the right to unpaid family and medical leave. Generally, the FMLA applies to employees who work for a private employer with 50 or more employees or for a public employer, and meet employment duration requirements.

The FMLA allows eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for: (1) the birth or placement of an adopted or foster child; or (2) a serious health condition of the employee or the employee's family member.

Eligible employees may also take leave because of a qualifying exigency arising out of active military duty or impending active duty status. Additionally, eligible employees may take up to a total of 26 workweeks of unpaid, job-protected leave, during a single 12-month period, to care for a covered service member with a serious injury or illness. The employee must be the spouse, son, daughter, parent, or next of kin of the covered service member.

- State Family Leave Act - (unpaid leave) (expires 12-31-2019). The state Family Leave Act (FLA) is similar to the FMLA but does not include military exigency leave. Under the FLA, a "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves inpatient care at specified facilities, or for conditions involving continuing treatment by a health care provider as specified in the statute.

The FLA expires on December 31, 2019, the day before benefits are payable under the new state Paid Family and Medical Leave Insurance Program.

- State Military Family Leave Act. The state military family leave act allows certain employees to take up to 15 days of job-protected leave during a period of military conflict. The leave is available when the employee's spouse is notified of an impending call to active duty or when the spouse is on leave from active duty. Military family leave may be taken only before deployment or during leave from deployment. The leave under this act is unpaid time off.
- State - Employer Paid Sick Leave (RCW 49.46.200-210). Under Initiative 1433, passed by the voters in 2016, employees are eligible for paid sick leave beginning on January 1, 2018. Paid sick leave accrues at the rate of one hour of leave for every 40 hours worked. Paid sick leave may be used for the employee's or a family member's injury, illness, or health condition, or need for preventative care and other specified situations. Employers must pay employees using paid sick leave at their regular rates of pay or the minimum wage, whichever is greater.

Additional Resources:

- Legislative documents:
 - SSB 5975 (2017) Paid Family & Medical Leave Program.
<http://apps2.leg.wa.gov/billsummary?BillNumber=5975&Year=2017>
 - HB 2702 (2018) Making Technical Corrections to the Family and Medical Leave Program.
<http://apps2.leg.wa.gov/billsummary?BillNumber=2702&Year=2017>
- RCW 50A.04: <http://app.leg.wa.gov/rcw/default.aspx?cite=50A.04>
- Fiscal: <https://fortress.wa.gov/ofm/fnspublic/FNSPublicSearch/Search/5975/65>
- Implementing agency and rules: <https://esd.wa.gov/paid-family-medical-leave>

Information About this Guide:

This *Legislator's Guide to Washington's Paid Family and Medical Leave Program* is offered as a resource to members of the Senate, their staff, and other interested persons to provide an overview of the paid family and medical leave laws in this state.

The *Legislator's Guide to Washington's Paid Family and Medical Leave Program* was prepared by the Senate Labor & Commerce Committee staff (within Senate Committee Services) to provide answers to many of the typical questions regarding the state's paid family and medical leave laws.

This guide should not be considered legislative history for purposes of interpreting the associated statutes or regulations. The information contained in this guide should not be interpreted as providing legal advice. The content is intended for general informational purposes only. This guide does not reflect changes made to statutes or administrative rules adopted after the date of publication.

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Questions concerning this report or requests for other documentation should be directed to:

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