



On July 5, the Governor of Washington State signed Senate Bill 5975c, which enacts a comprehensive paid family and medical leave act law. While Washington State had previously passed a paid family leave law in 2007, the program was never funded. The new law expands upon the original concept, and provides funding. Deductions pursuant to the new law begin January 1, 2019, while benefits begin January 1, 2020. The law contains the following provisions:

- Employee Eligibility: All employees are eligible for family and medical leave benefits after working for at least 820 hours during the qualifying period (first 4 of the prior 5 calendar quarters).
- Covered Employers: All employers are covered.
- Covered Relationships:
 - Family member, including a child, grandchild, grandparent, parent, sibling, spouse, or domestic partner of an employee
 - Self
- Reasons for Leave: Paid family and medical leave benefits are for the following purposes:
 - Family leave:
 - participating in providing care, including physical or psychological care, because of a family member's serious health condition;
 - bonding with the employee's child during the first 12 months after the child's birth, or placement of a child under the age of 18; or
 - qualifying military exigency (as permitted under the federal Family and Medical Leave Act [FMLA]) for family members.
 - Medical leave: leave taken by an employee because of the employee's own serious health condition.
- Length of Leave:
 - Employee's own serious health condition – 12 weeks per 52 consecutive calendar weeks
 - Care for a family member with a serious health condition, bonding, or military exigency - 12 weeks per 52 consecutive calendar weeks
 - Combined paid family and medical leave benefits maximum - 16 weeks per 52 consecutive calendar weeks
 - Combined maximum extended to 18 weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity
 - Other Details:
 - Minimum increment of time - 8 hours
 - Waiting period - 7 days for family or medical leave (does not apply for the birth or placement of a child)
- Paid/Unpaid: This leave is paid. Leave pay will vary from \$100 to \$1,000 a week, based largely on percentages of employees' wages. Employers may opt to use the state-administered program or establish a voluntary plan. The benefits are funded by payroll deductions that include employee and employer contributions.

- If the employee's average weekly wage (AWW) is:
 - 50% or less of the state AWW, the employee's weekly benefit is 90% of the employee's AWW;
 - greater than 50% of the state AWW, the employee's weekly benefit is the sum of 90% of the employee's AWW up to 50% of the state AWW, **plus** 50% of the employee's AWW that is greater than 50%.
- Minimum weekly benefit - \$100.00 per week. If the employee's AWW at the time of family and medical leave is less than \$100.00 per week, the weekly benefit will be the employee's full wage.
- Maximum weekly benefit - \$1,000.00. By September 30, 2020, and by each subsequent September 30, the commissioner will adjust the maximum weekly benefit amount to 90% of the state AWW.
- Premiums:
 - For 2019 and 2020, the total premium rate is 0.4% of the individual's wages.
 - Premium rate for family leave benefits - 1/3 of the total premium rate. This amount is fully employee-funded.
 - Premium rate for medical leave benefits - 2/3 of the total premium rate. This amount is funded 45% by the employee and 55% by the employer.
 - 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, but if they choose to, the employer is eligible for certain assistance under the new law.
- Voluntary Plan
 - An employer can apply to the Commissioner of the Washington State Employment Security Department for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both.
 - A voluntary plan must meet certain minimum requirements to qualify, including but not limited to:
 - The benefits provided to employees must be at least equivalent to the benefits the employees are entitled to as part of the state's program, including but not limited to the duration of leave.
 - The employer must offer at least 1/2 of the length of leave as provided under the state program 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 for a voluntary plan cannot exceed the maximum payroll deduction for the state plan.
- Job Protection and Benefits: Any employee who returns from leave taken under the new law is entitled:
 - to be restored by the employer to the position of employment held by the employee when the leave began; or

- to be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

This applies if the employee:

- works for an employer with 50 or more employees;
- has been employed by the current employer for 12 months or more; and
- has worked for the current employer for at least 1,250 hours during the 12 months immediately preceding the start of leave.

Certain exceptions apply to key employees.

- Coordination with the FMLA: Leave under this law is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth. Leave under this law must be taken concurrently with leave under the federal FMLA.
- Use of PTO, Vacation, or Other Personal Leave Time: An employer may allow an employee who has accrued vacation, sick, or other paid time off to choose whether:
 - to take such leave; or
 - not to take such leave and receive paid family or medical leave benefits.
- Notice:
 - Employee Notice:
 - Birth or Placement of a Child: If the need for leave for the birth or placement of a child is foreseeable, the employee must provide the employer at least 30 days' notice before the date the leave is to begin, except when the birth or placement date requires leave to begin in less than 30 days, in which case the employee must provide such notice as soon as is practicable.
 - Serious Health Condition: If the need for leave due to the serious health condition of the employee or a family member is foreseeable, the employee:
 - must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or family member, as appropriate; and
 - must notify the employer of his or her intention to take leave at least 30 days before the leave start date, unless the treatment requires leave to begin in less than 30 days, in which case the employee must notify the employer as soon as is practicable.
 - Employer Notice:
 - Posting: Each employer must post in conspicuous places a notice to be prepared or approved by the Commissioner, including excerpts or summaries of the relevant provisions of this law and information about filing a complaint.

- Written Notice: Whenever an employee who is qualified for benefits misses more than 7 days of work to provide family leave or for his or her own serious health condition, the employer must provide the employee with a written statement of the employee's rights under this chapter in a form prescribed by the Commissioner. The statement must be provided to the employee within 5 business days after the employee's 7th consecutive day of absence due to family or medical leave, or within 5 business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is **later**.

- Certification/Documentation To be eligible for benefits, an employee must provide a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of a certification of a serious health condition. If requested by the employer, an employee must provide documentation of a military exigency. As a condition of job restoration for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires the employee to receive certification from the employee's health care provider that the employee is able to resume work.

- Recordkeeping and Confidentiality:
 - An employer must retain records of employment for a period of six years, during which time the department may obtain information for purposes of this law. Records must be available for inspection by the Commissioner at all times.

 - Information obtained from employer records is confidential and not open to public inspection, other than to public employees in the performance of their official duties.

What Employers Must Do Now

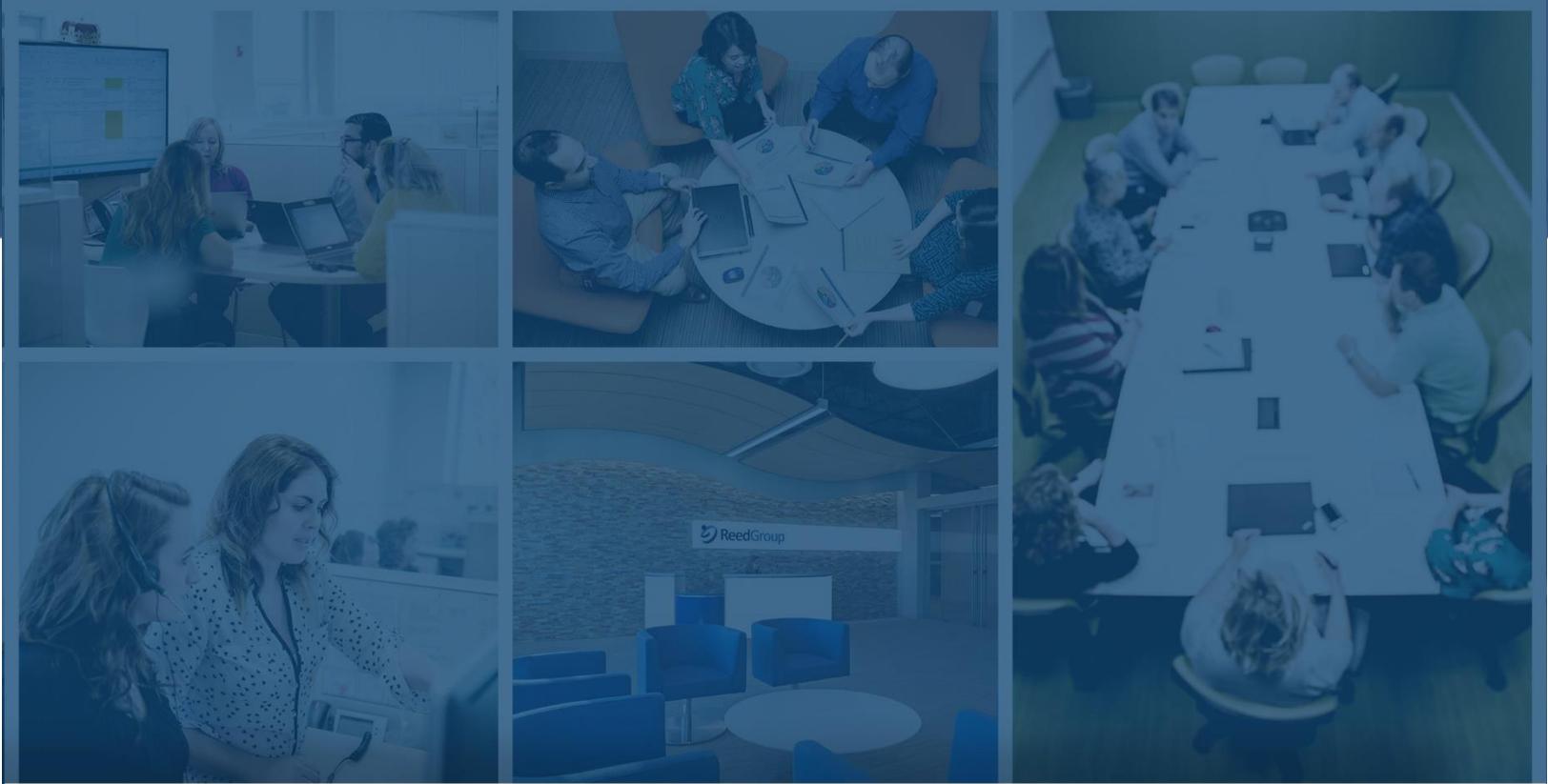
Washington State employers are responsible for compliance with the new law upon its effective date (deductions begin 1/1/19; benefits begin 1/1/20). Employers should:

- Determine how the employer will meet its obligations under the law;
- Review and update any policies or handbooks to include the new leave and benefits;
- Train appropriate personnel (Human Resources, Benefits, etc.) on how to manage the new benefits and leave; and
- Train supervisors and managers on the new leave so they can help spot covered absences and enlist HR assistance.

What Reed Group Is Doing

If you are using Reed Group's leave management services or software, we are:

- Reviewing the new law and awaiting additional rules and regulations to determine how it will fit into ReedGroup's product offerings; and
- Adding a new chapter regarding Washington State Paid Family and Medical Leave in Leave Advisor™.



WASHINGTON PAID FAMILY LEAVE

An Overview and Status Report



July 2018

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OVERVIEW

The purpose of this document is to provide a general overview about the Washington State Paid Family Leave (“WA PFL”) and share details about ReedGroup’s product offering to help you prepare for the upcoming changes. Deductions pursuant to the new law begin January 1, 2019, while benefits begin January 1, 2020.

NOTE: Regulations for the WA PFL program are being released in phases. This document is a working document, subject to change as more details of the program and administration become available.



REGULATIONS AND BASIC REQUIREMENTS

This section provides a high-level summary of some of the major components of the WA PFL program, including eligibility, benefits, and responsibilities of both employees and employers.

Note: Phase 1 of the Regulations for the Washington State Paid Family Leave program are finalized. Phase 2 of the Regulations regarding Employer responsibilities, Penalties, and Small Business Assistance is pending. From time to time, proposed regulations will be mentioned below. These may change between now and the final implementation of this program.

Additional phases are anticipated but have not yet been drafted. These are anticipated as follows:

- Phase 3: Benefits, slated to begin August 2018
- Phase 4: Appeals, slated to begin Mid 2019



EFFECTIVE DATE

Deductions pursuant to the new law begin January 1, 2019, while benefits begin January 1, 2020.

EMPLOYERS AFFECTED

All employers with eligible employees in Washington State are covered by the law.

Note: Employers with fewer than fifty employees employed in the state are not required to pay the employer portion of premiums for family and medical leave, and are not required to provide employees with the job protection provisions set forth in the law.

ELIGIBILITY

ELIGIBILITY FOR BENEFITS

Eligibility for Benefits under the State Plan: All employees are eligible for family and medical leave benefits after working for at least 820 hours of work *for any employer(s)* in Washington State during the qualifying period. The qualifying period is the first four of the last five full calendar quarters, or the last four full calendar quarters. Either period may be used to establish eligibility. The chart below illustrates how this works:

Qualifying Period					
4th Q/2020 <small>(Oct.-Dec.)</small>	1st Q/2021 <small>(Jan.-Mar.)</small>	2nd Q/2021 <small>(Apr.-Jun.)</small>	3rd Q/2021 <small>(Jul.-Sept.)</small>	4th Q/2021 <small>(Oct.-Dec.)</small>	1st Q/2022 <small>(Jan.-Mar.)</small>
X	X	X X	X X	X	X 820 820

Note: 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 agree to pay premiums for a minimum of three years. They'll also have to file claims for benefits, agree to disclose certain information, notify their employers, and meet certain documentation requirements, depending on the type of claim.

Eligibility for Benefits under a Voluntary Plan:

To qualify for an employer's approved voluntary plan, an employee must have been:

- in employment for at least 820 during the qualifying period; and
- in employment with that employer for at least 340 hours;

or

- covered by an approved voluntary plan through their previous employer.

Employees working for an employer with a voluntary plan who have not yet met eligibility requirements for that plan are eligible for benefits under the state plan if all other requirements are met.

When an employee files a claim for benefits, an employer will access the employee's weekly benefit amount and typical workweek hour's information online, or in another format approved by the department, and ensure the employee qualifies for at least an equivalent benefit amount from its voluntary plan.

Upon hiring an employee previously covered under a state plan, the employer with an existing voluntary plan must report to the department online, or in another format approved by the department, the new employee's status for the voluntary plan after the employee becomes eligible for that plan.

ELIGIBILITY FOR JOB PROTECTION

Eligibility for Job Protection under the State Plan: Employers that utilize the state plan must provide job protection if the employee:

- works for an employer with fifty or more employees;
- has been employed by the current employer for 12 months or more; and
- has worked for the current employer for at least 1,250 hours during the 12 months immediately preceding the start of leave.

Eligibility for Job Protection under a Voluntary Plan: For employers that opt for a voluntary plan, the employee is entitled to job protection if the employee:

- has worked for the employer for at least 9 months; and
- has worked for the employer for at least 965-hours during the 12-month period prior to the start of leave.

See more about job protection in Job Protection section, below.

COLLECTIVE BARGAINING AGREEMENTS

Employers and employees who are covered by a collective bargaining agreement (CBA) are not covered by the law. The law will apply to those workforces when an existing CBA expires, or is reopened or renegotiated by the parties. Employers must inform the WA Employment Security Department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017. An employer must file quarterly reports once a collective bargaining agreement expires, is reopened, or is renegotiated.

To be eligible for benefits, an employee must have worked at least eight hundred twenty hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened, renegotiated, or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within ten calendar days.

Employers are subject to the rights and responsibilities of the law for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees. Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of the law as they pertain to the bargaining units whose collective bargaining agreement has expired, been reopened, or renegotiated, on or after October 19, 2017.

LOCATION OF EMPLOYMENT

Employment includes an individual's entire service performed within or outside of Washington or both within and outside the state, if:

- the service is localized in Washington; or
- the service is not localized in Washington, but some of the service is performed in Washington; and:
 - the base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such service is directed or controlled is in Washington; or
 - The base of operations or place from which service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.

An employee's work is subject to all reporting requirements and premiums when the work is localized in Washington. An employee's work is considered localized in Washington when:

- *All of the employee's work is performed entirely within Washington; or*
- *Most of the employee's services are performed within Washington, but some of the work which is temporary or transitory in nature, or consists of isolated transactions is performed outside of Washington.*

Services that are not localized in Washington will be subject to reporting requirements and premiums when the services are not localized in any state, but some of the services are performed in Washington, and:

- *The base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such services is directed or controlled is in Washington; or*
- *The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.*

Example: A storm hits Washington. An employer in Oregon dispatches an employee who typically lives and works in Oregon to help with repair work. The employee works temporarily in Washington for the employer for one week, and then returns to work in Oregon for the employer. The employment is localized within Oregon and is not subject to premium assessment.

APPLICATION FOR WAIVER OF PREMIUMS/BENEFITS FOR OUT-OF-STATE EMPLOYMENT

An employer can file an application with the Employment Security Department for a conditional waiver to be exempt from the payment of premiums, for any employee who is:

- physically based outside of the state;
- employed in the state on a limited or temporary work schedule; and
- not expected to be employed in the state 820 hours or more in a qualifying period.

The Employment Security Department must approve an application that has been signed by both the employee and employer verifying their belief that those conditions will be met during the qualifying period. If the employee exceeds the 820 hours or more in a qualifying period, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the qualifying period in which the employee exceeded 820 hours had the waiver not been granted. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.

Example: A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer could request a conditional premium waiver for this employee.

LEAVE REASONS

Paid family and medical leave benefits are for the following purposes:

- Family leave:
 - Participating in providing care, including physical or psychological care, because of a family member's serious health condition
 - To bond with the employee's child during the first 12 months after birth
 - To bond with the employee's child during the first 12 months after adoption placement of a child under the age of eighteen
 - To bond with the employee's child during the first 12 months after foster care placement of a child under the age of eighteen
 - A qualifying exigency* arising out of the fact that the employee's child, grandchild, grandparent, parent, sibling, or spouse of an employee is on covered active duty or has been notified of an impending call or order to covered active duty in the armed forces [*qualifying exigency here is defined the same as in the Family and Medical Leave Act (FMLA)]
 - *Note: While qualifying exigency is defined the same as under the FMLA, the Washington Paid Family Leave permits leave for a qualifying exigency for an employee's child, grandchild, grandparent, parent, sibling, or spouse, while the FMLA permits leave for a qualifying exigency for an employee's child, parent, or spouse.

- Medical leave:
 - leave taken by an employee because of the employee's own serious health condition.

COVERED RELATIONSHIPS

- Family members include:
 - a child - biological, 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 age or dependency status;
 - grandchild - a child of the employee's child;
 - grandparent - parent of the employee's parent;
 - parent - biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child;
 - sibling; and
 - spouse - a husband or wife, or state registered domestic partner.

- Self

AMOUNT OF LEAVE AND BENEFITS

Leave Reason	Amount of Time
Employee's own serious health condition	12 weeks per 52 consecutive calendar weeks
Care for a family member with a serious health condition, bonding, or military exigency	12 weeks per 52 consecutive calendar weeks
Combined paid family and medical leave benefits maximum	16 weeks per 52 consecutive calendar weeks
If the employee experiences a serious health condition with a pregnancy that results in incapacity	18 weeks

Calculation of Year Period

Rolling back

Minimum Increment of Time

The minimum claim duration payment is for eight consecutive hours of leave.

WAITING PERIOD

- Waiting period - 7 days for family or medical leave (does not apply for the birth or placement of a child)
- Successive periods of family and medical leave caused by the same or related injury or sickness are a single period of family and medical leave only if separated by less than four months.

FUNDING

Employers may opt to use the state-administered program or establish a voluntary plan.

- Benefits are funded by payroll deductions that include employee and employer contributions. For 2019 and 2020, the total premium rate is 0.4% of the individual's wages. For 2021 and after, the total premium rate will be based on the family and medical leave insurance account balance ratio as of September 30th, 2020.
- The premium rate for family leave benefits is 1/3 of the total premium rate. This amount is fully employee-funded. The premium rate for medical leave benefits is 2/3 of the total premium rate. This amount is funded 45% by the employee and 55% by the employer.
- For calendar year 2022 and after, the Commissioner of the Washington State Employment Security Department (the "Commissioner") will determine the percentage of paid claims related to family leave benefits and the percentage of paid claims related to medical leave benefits and adjust the premium rates by the proportional share of paid claims.
- An employer can elect to pay all or any portion of the employee's share of the premium for family leave or medical leave benefits, or both.

Small Employers: 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, but if they choose to, the employer is eligible for certain assistance under the new law.

Question: What premium responsibilities do I have as an employer?

Answer: *A total premium of 0.4 percent up to the social security cap is assessed for each employee. Generally speaking, the employer is responsible for approximately 37 percent of that premium. So if an employee makes \$50,000 annually, the total annual assessment would be \$200, of which \$126.67 would be paid for by the employee, and \$73.33 would be paid for by the employer. Employers will be responsible for remitting all premiums collected for Paid Family and Medical Leave to the state.*

Question: Am I allowed to cover some or all of the employee portion of the total premium?

Answer: As a benefit to employees, employers are permitted to cover some or all of the employee share of the total premium. This is not categorized as a voluntary plan and does not require approval by the state. The employer would simply reduce the premium amount deducted from employee paychecks, cover the difference, and then remit the full amount to the state. If you opt to do this, you may become eligible for grants of up to \$3000 per employee up to 10 times per year to help cover wage-related expenses or hiring a temporary replacement.

When are employer premium payments due?

Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid.

Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest.

BENEFITS

Paid Family Leave benefits will vary from \$100 to \$1,000 a week, based largely on percentages of employees' wages. If the employee's Average Weekly Wage (AWW) is:

- 50% or less of the state AWW, the employee's weekly benefit is 90% of the employee's AWW;
- greater than 50% of the state AWW, the employee's weekly benefit is the sum of 90% of the employee's AWW up to 50% of the state AWW, **plus** 50% of the employee's AWW that is greater than 50%.
- Minimum weekly benefit - \$100.00 per week. If the employee's AWW at the time of family and medical leave is less than \$100.00 per week, the weekly benefit will be the employee's full wage.
- Maximum weekly benefit - \$1,000.00. By September 30, 2020, and by each subsequent September 30, the Commissioner will adjust the maximum weekly benefit amount to 90% of the state AWW.

An employee's weekly benefit will be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours

VOLUNTARY PLAN

Employers may opt to use the state-administered program or establish a voluntary plan.

An employer can apply to the Commissioner for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both. The application must be submitted on a form and in the manner as prescribed by the Commissioner. The fee for the department's review of each application for approval of a voluntary plan is \$250.00. Voluntary plans will take effect on the first day of the quarter immediately following the approval of the plan.

An employee covered by an approved voluntary plan at the start of a period of family leave or a medical leave benefit period is not entitled to benefits from the state program. Benefits payable to that employee are the liability of the approved voluntary plan under which the employee was covered at the start of the family leave or medical leave benefit period, regardless of any subsequent serious health condition or family leave which may occur during the benefit period.

A voluntary plan must meet the following requirements:

- The benefits 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 plan must:
 - allow the employee to take at least the same duration of leave from work as the state plan;
 - pay at least equivalent total monetary benefits as the state plan;
 - not withhold an amount from an employee's wages that is higher than what would be withheld under the state plan for the same period of time; and
 - offer leave for at least the same reasons as the state plan.
- The sick leave an employee is entitled to under Washington's Paid Sick and Safe Leave law is in addition to the employer's provided benefits and is in addition to any family and medical leave benefits.
- The plan is available to all of the eligible employees of the employer employed in this state, including future employees.
- The employer has agreed to make the payroll deductions required, if any, and transmit the proceeds to the department for any portions not collected for the voluntary plan.
- The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the employer withdraws from the plan as permitted by regulations. The plan may be withdrawn by the employer on the date of any law increasing the benefit amounts or the date of any change in the rate of employee premiums, if notice of the withdrawal from the plan is transmitted to the Commissioner not less than 30 days prior to the date of that law or change. If the plan is not withdrawn, it must be amended to conform to provide the

increased benefit amount or change in the rate of the employee's premium on the date of the increase or change.

- Deductions cannot be increased on other than an anniversary of the effective date of the plan, except to the extent that any increase in the deductions from the wages of an employee do not exceed the maximum rate authorized under the state program.
- Benefit eligibility: The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, is eligible for the plan benefits if the employee meets the requirements set forth in the law and has worked at least 340 for the employer during the 12 months immediately preceding the date leave will begin.
- Job protection eligibility: The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, who takes leave under the voluntary plan is entitled to employment protection provisions if the employee has worked for the employer for at least 9 months and 965 hours during the 12 months immediately preceding the date leave will begin.
- The voluntary plan provides that the employer maintains the employee's existing health benefits.

Note: Employees who are not yet eligible for coverage under an approved voluntary plan are eligible for benefits under the state plan as long as they have worked 820 hours in the qualifying period.

The employer must have the voluntary plan approved by the Commissioner annually for the first three years. After the first three years, the employer is only required to have the approval if the employer makes changes to the plan that were not mandated by changes to state law.

An employer may assume all or a greater part of the cost of the voluntary plan than required under the state program. An employer may deduct from the wages of an employee covered by the voluntary plan, for the purpose of providing the benefits, an amount not in excess of that which would be required if the employee was not covered by the plan. All deductions from the wages of an employee remaining in the possession of the employer upon the employer's withdrawal of the voluntary plan as a result of plan contributions being in excess of plan costs, that are not disposed of in conformity with the department's rules, must be remitted to the department and deposited in the family and medical leave insurance account.

Any employee contributions to and income arising from an approved voluntary plan received or retained by an employer under an approved voluntary plan are trust funds that are not considered to be part of an employer's assets. An employer must maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution

How does an employer apply for approval of a voluntary plan?

Voluntary plan applications can be submitted through the online portal, which is currently under development and expected to become available in late summer of 2018. For the first three years of a voluntary plan's existence, re-approval is required every year. After three years, re-approval is only

required if the employer makes changes to the plan that is not required by statute. All voluntary plan applications will be subject to a \$250 fee. If a voluntary plan is denied, employees are covered under the state plan.

Accelerated Payments under a Voluntary Plan: An employer with an approved voluntary plan can, at its discretion, use an accelerated payment schedule. The total monetary benefit must be equal to or greater than what the employee would have received under the state plan. If the employer chooses to use an accelerated payment schedule, the total monetary benefit must be paid to the employee over a length of time that is no less than one-half of what would have been provided under the state plan. Whether an employer elects to use an accelerated payment schedule has no impact on the length of job-protected leave to which the employee is entitled. If an employer chooses to utilize an accelerated payment schedule and the employee agrees to return to work earlier than required, the employer cannot require the employee to repay benefits as a result of returning to work earlier.

Example: *An employee elects to take 12 weeks of leave for the birth of a child. The weekly benefit amount is \$750. The employer decides to pay the employee \$1,500 weekly over 6 weeks. In addition, the employer and the employee agree that the employee will return to work after 6 weeks.*

In this example, the employee would still have been permitted to take the full 12 weeks of leave if the employee had decided to do so.

DURATION AND TERMINATION OF VOLUNTARY PLAN

A voluntary plan in force and effect at the time a successor acquires the organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue the voluntary plan and may not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the Commissioner. A successor can terminate a voluntary plan with notice to the Commissioner and without a request to withdraw the plan within ninety days from the date of the acquisition.

If the employer chooses to withdraw from a voluntary plan, the employer must notify the department at least 30 calendar days before the withdrawal. Notification of withdrawal must be submitted to the department online or in another format approved by the department. If the department has terminated an employer's participation in a voluntary plan, the department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including premiums paid by the employer, premiums paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys. The amount will be due immediately. Any balance owed will not start collecting interest until 30 calendar days after the date of the invoice.

JOB PROTECTION

Eligibility for Job Protection under the State Plan: Employers that utilize the state plan must provide job protection if the employee:

- works for an employer with fifty or more employees;
- has been employed by the current employer for 12 months or more; and
- has worked for the current employer for at least 1,250 hours during the 12 months immediately preceding the start of leave.

Eligibility for Job Protection under a Voluntary Plan: For employers that opt for a voluntary plan, the employee is entitled to job protection if the employee:

- has worked for the employer for at least 9 months; and
- has worked for the employer for at least 965-hours during the 12-month period prior to the start of leave.

Employees who are entitled to job protection are entitled:

- to be restored by the employer to the position of employment held by the employee when the leave began; or
- to be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

Taking leave pursuant to the Washington State Paid Family Leave cannot result in the loss of any employment benefits accrued before the date of the leave.

An employee is not entitled to:

- the accrual of any seniority or employment benefits during any period of leave; or
- any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

MAINTENANCE OF HEALTH INSURANCE BENEFITS

If required by the federal FMLA during any period of WA PFL, the employer must maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued during the leave period. If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost. This section does not apply to an employee who is not in employment for an employer at the time of filing an application for benefits.

EXCEPTION FOR HIGHLY-COMPENSATED EMPLOYEES

An employer can deny restoration to any salaried employee who is among the highest paid 10% of the employees employed by the employer within 75 miles of the facility at which the employee is employed if:

- Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
- The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and
- The leave has commenced and the employee elects not to return to employment after receiving the notice.

RETURN-TO-WORK CERTIFICATION

As a condition of job restoration for an employee who has taken medical leave, the employer can maintain a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work. An employer can require an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

CONCURRENCY WITH FMLA

Leave under this law is in addition to any state leave taken for sickness or temporary disability because of pregnancy or childbirth, i.e. the Washington State Pregnancy Disability Leave. Leave under this law must be taken concurrently with leave under the federal FMLA, if the leave reasons meet the requirements of both laws.

Leave from employment under this chapter is in addition to leave from employment during which benefits are paid or are payable under Workers' Compensation or other applicable federal or state industrial insurance laws.

In any week in which an employee is eligible to receive benefits under Unemployment Insurance or Workers' Compensation, or other applicable federal or state unemployment compensation, industrial insurance, or disability insurance laws, the employee is disqualified from receiving family or medical leave benefits under the Washington Paid Family Leave law.

NOTICE

EMPLOYEE NOTICE RESPONSIBILITIES

- Birth or Placement of a Child: If the need for leave for the birth or placement of a child is foreseeable, the employee must provide the employer at least 30 days' notice before the date the leave is to begin, except when the birth or placement date requires leave to begin in less than 30 days, in which case the employee must provide such notice as soon as is practicable.
- Serious Health Condition: If the need for leave due to the serious health condition of the employee or a family member is foreseeable, the employee:

- must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or family member, as appropriate; and
- must notify the employer of his or her intention to take leave at least 30 days before the leave start date, unless the treatment requires leave to begin in less than 30 days, in which case the employee must notify the employer as soon as is practicable.

EMPLOYER NOTICE RESPONSIBILITIES

- **Posting:** Each employer must post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Commissioner, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a complaint.
 - Any employer that willfully violates this section may be subject to a civil penalty of not more than \$100.00 for each separate offense. Any penalties collected by the department under this section must be deposited into the family and medical leave enforcement account.
- **Written Notice:** Whenever an employee who is qualified for benefits misses more than 7 days of work to provide family leave or for his or her own serious health condition, the employer must provide the employee with a written statement of the employee's rights in a form prescribed by the Commissioner.
 - The statement must be provided to the employee within 5 business days after the employee's 7th consecutive day of absence due to family or medical leave, or within 5 business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is later.

CERTIFICATION

To be eligible for benefits, an employee must provide a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of a certification of a serious health condition.

If requested by the employer, an employee must provide documentation of a military exigency.

As a condition of job restoration for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires the employee to receive certification from the employee's health care provider that the employee is able to resume work.

USE OF PTO

An employer may allow an employee who has accrued vacation, sick, or other paid time off to choose whether:

- to take such leave; or
- not to take such leave and receive paid family or medical leave benefits.

RECORDKEEPING

- An employer must retain records of employment for a period of six years, during which time the department may obtain information for purposes of this law. Records must be available for inspection by the Commissioner at all times.
- Information obtained from employer records is confidential and not open to public inspection, other than to public employees in the performance of their official duties.

REPORTING

Employees cannot collect benefits from both the state plan and a voluntary plan for the same period. To ensure compliance, employers with an approved voluntary plan must report:

- All information required of employers by the state plan;
- Weekly benefit and leave duration information for any employee who takes leave under that plan for reasons that would have qualified for leave under the state plan; and
- Premiums, if any, withheld from employee wages.

Upon request, the department will provide weekly benefit, typical workweek hours, and leave duration information to any employer with an approved voluntary plan that requests it for an employee who intends to take leave under that plan.

The Phase 2 Proposed Regulations contain the following:

WAC 192-540-030 What are employers required to report to the department?

Each calendar quarter, every employer subject to the rights and responsibilities of Title 50A RCW must file a complete report with the department. The report must include each employee's:

- Full name;
- Social Security number;
- Address of physical workplace;
- Job title;
- Start date;
- Wages paid during that quarter; and
- Total hours worked.

If an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of the employee's wages.

WAC 192-540-040 When are employers required to submit quarterly reports to the department?

The quarterly reports referenced in WAC 192-540-030 are due by the last day of the month following the end of the calendar quarter being reported. If a reporting date falls on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The Commissioner must approve exceptions to the time and method of filing in advance.

PENALTIES

An employer who willfully fails to make the required reports is subject to penalties as follows:

- For the second occurrence, the penalty is seventy-five dollars;
- for the third occurrence, the penalty is one hundred fifty dollars; and
- for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

An employer who willfully fails to remit the full amount of the premiums when due is liable, in addition to the full amount of premiums due and amounts assessed as interest, to a penalty equal to the premiums and interest.

Any penalties under this section must be deposited into the family and medical leave enforcement account.

"Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

RESOURCES

- [Employment Security Department Paid Family & Medical Leave page](#)
- [Employer FAQs](#)
- [Employee FAQs](#)
- [Voluntary plan info](#)
- [Paid sick leave vs. Paid Family and Medical Leave](#)

WASHINGTON PAID FAMILY LEAVE: REEDGROUP PRODUCT OFFERING

ReedGroup has assembled its Washington State Paid Family Leave implementation team comprised of members from its compliance, operations, product, development, and client services teams. This project team is focused on ensuring ReedGroup's clients, systems and operations are ready for go-live January 1, 2020.

SERVICE CLIENTS

Whether you choose a Voluntary Plan or to go through the state, ReedGroup will ensure our systems and operational teams are ready to administer a voluntary WA PFL plan or to coordinate with the state for you.

- Leave Plan Setup and Configuration Updates
- Workflow Enhancements
- Intake Scripting Enhancements
- Notification and Form Updates
- Administer Offsets if Needed
- Setup WA PFL Benefit Plans if Applicable
- Outbound Feed Updates if Applicable
- Washington State Quarterly Report Development
- Operational Teams Trained on New Law and Administrative Processes

SAAS CLIENTS

Whether you choose a Voluntary Plan or to go through the state, ReedGroup will ensure our systems are ready to help you administer a voluntary WA PFL plan or to coordinate with the state.

- Leave Plan Setup and Configuration Updates
- Workflow Enhancements
- Notification and Form Updates
- Outbound Feed Updates if Applicable
- Washington State Quarterly Report Development