

Washington Employees Can Soon Access PFML Paid Leave

Beginning in January 2020, Washington employees can start using new benefits under the Paid Family and Medical Leave Act (PFML). Employees and employers have paid the required premiums on the new paid leave benefits for all of 2019, but the benefits themselves have not been available. The new paid leave law replaces and expands on Washington's Family Leave Act (WFLA), which currently mirrors many protections also provided by the federal Family Medical Leave Act (FMLA).

What Benefits Will Be Available to Eligible Employees Beginning in 2020?

Similar to a short-term disability insurance plan, the PFML allows employees to take paid time off to care for new children, sick relatives or to recover from their own serious medical condition. The program covers between 12 and 18 weeks of paid leave for a qualifying event, depending upon the circumstances. While on leave, eligible employees will receive as much as 90% of their regular weekly pay, but not less than \$100 and no more than \$1,000 per weekly payment. Employers who opted to provide an approved voluntary plan rather than participating in the state-run program must offer at least the same amount of coverage for their eligible employees.

Who Is an Eligible Employee and What Is a Qualifying Event?

An eligible employee is any worker who has completed 820 hours of work for any Washington employer in a qualifying period. A qualifying period is the first four of the last five full calendar quarters, or the last four full calendar quarters. An employee may use either period to establish eligibility and may also aggregate hours across several employers.

In most circumstances, an employee may take up to 12 weeks of either family leave or medical leave depending on the nature of the qualifying event. Most employees will max out at 16 weeks if they are combining family and medical leave, but an additional 2 weeks of leave will be available in case of complications due to pregnancy.

Qualifying family leave events include:

- Caring for and bonding with a new child, either by birth or placement of a child younger than 18
- Caring for a family member experiencing a serious illness or medical condition
- Events relating to certain military deployment circumstances

Qualifying medical leave events include:

- Self-care while recovering from a serious illness or medical condition

What Does the New Law Mean for Employees?

Even though the PFML was originally passed in 2017, none of its provisions officially went into effect until January 2019, and employees are not able to access its benefits until January 2020. Employers and employees were required to contribute premiums for a year prior, to ensure that the program is funded before benefits become available to employees.

In passing the PFML, Washington's legislature decided to sunset the previous benefits provided by the FLA since 1989. The FLA was a state law precursor to the federal protections subsequently provided by the FMLA. While mirroring the FMLA in many respects, to the extent that the FLA and FMLA differ, the FLA's protections will sunset on December 31, 2019, just as the PFML's benefits become available to employees.

The PFML differs from the FLA in that the FLA did not provide employees with any paid time off.

The biggest impact for employees is access to paid leave for qualifying events under the PFML. While the FLA required employers to allow employees to take leave for qualifying events, it did not require the leave to be compensated in any way. According to the U.S. Bureau of Labor Statistics, in 2017, when the PFML was passed, the total percentage of employees with access to *paid* family leave in the entire western United States was only 14%. The PFML is expected to provide significantly increased worker security and employment stability for Washington employees.

What Should Employers Be Thinking About?

Most Washington employers have been dealing with the implications of the PFML provisions that took effect earlier this year, including coordinating collection and payment of program premiums, seeking approval of voluntary plans, and meeting the reporting requirements. It is important for employers to also start planning for this next phase of the program's implementation.

As the benefits become available, employers should anticipate an increase in leave usage because employees who previously could not afford to take unpaid leave may now do so because paid benefits will be available. Also, some employees may have been delaying potentially qualifying events (to the extent they are within the employee's control) in order to access the new paid leave benefits. Additionally, the Washington Employment Security Department has said that FMLA and/or WFLA leave taken in 2019 will not count against an employee's PFML entitlement. This means that the early impact of the program on workforce supply throughout 2020 may be greater than would be normal under the program going forward.

In addition, employers may want to consider to what extent salary continuation programs, paid time off, leave banks and benefits available under a short-term disability insurance plan, particularly if self-funded by an employer, may be coordinated with PFML benefits. Planning around federal income tax implications of these leave programs, plan benefits and payment from them continue to be evaluated by employers, including related reporting and withholding obligations.

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Authors



Emily A. Bushaw

Partner

EBushaw@perkinscoie.com [206.359.3069](tel:206.359.3069)

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