Updates
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Washington Expands Coverage for Paid Family and Medical Leave Eligibility

The Washington Legislature made several significant changes to the state's Paid Family and Medical Leave (PFML) program during the 2021 legislative session that all Washington employers should know. First, as of July 25, 2021, Washington employees can use PFML to care for an expanded list of individuals under the amended "family member" definition. Second, as of August 1, 2021, employees otherwise ineligible for PFML may qualify for a pandemic leave assistance employee grant, the cost of which may be offset by a grant to their employer. Third, the legislature clarified the statute to reduce ambiguity for leave claims occurring before January 1, 2020. Overall, Washington employers should become familiar with the following changes to the state's PFML program.

Expanded Paid Leave Coverage for Employees

Washington's PFML program permits eligible employees to receive paid leave for, among other reasons, participating in providing care for a family member with a serious health condition. The statute previously defined "family member" as an employee's "child, grandchild, grandparent, parent, sibling, or spouse of an employee." Now, however, the term family member also includes "[a]ny individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care" (RCW 50A.05.010(11)). Although the statute clarifies that family member does not include "an individual who simply resides in the same home with no expectation that the employee care for the individual," the new definition greatly expands who may qualify for paid leave under Washington's program.

Additionally, the new definition of family member applies to both the state's PFML program and to employers who utilize their own Washington State Employment Security Department-approved voluntary paid leave program. This means that employers should update their voluntary paid leave programs to be consistent with the statute's new definition of family member.

New Pandemic Leave Assistance Grants for Employees and Employers

For an employee to qualify for paid leave under the PFML program, an employee must work 820 hours during the "qualifying period," which means "the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave" (RCW 50A.05.010(20)). However, because unemployment due to the COVID-19 pandemic prevented many workers from accruing sufficient hours to qualify for paid leave, the legislature created a pandemic leave assistance employee grant program to help workers who would not otherwise qualify for paid leave.

Under the employee grant program, employees who do not meet the hours worked threshold for eligibility for PFML are eligible for a pandemic leave assistance employee grant if they worked 820 hours during the first through fourth calendar quarters of 2019, or worked 820 hours during the second through fourth calendar quarters of 2019 and first calendar quarter of 2020 (RCW 50A.15.130(1)). The benefits are equal to those under

PFML and are available for claims with an "effective start date in 2021 through March 31, 2022." The program expires on June 30, 2023. Id. at (1) and (4).

Recognizing that the new employee grant program may disproportionally affect small businesses, the Washington Legislature created a pandemic leave assistance employer grant program to aid businesses with the costs of employees on leave. Accordingly, employers with 150 or fewer employees and employers with 50 or fewer employees who pay all employer PFML premiums may apply for a grant of either $3,000 if the employer hires a temporary worker to replace an employee on leave, or up to $1,000 as reimbursement for significant additional wage-related costs due to the employee's leave (RCW 50A.24.020). Additional funds may also be available to cover the difference between the cost of hiring a temporary worker if an employee's leave extends beyond the leave initially planned. An employer may apply for a pandemic leave assistance employer grant only once and, although the legislation did not specify when the program will begin, the statute expires on June 30, 2023.

Prior Paid Leave Claims Continue

Washington's PFML program officially began on January 1, 2020, but its implementation created ambiguity regarding claims initiated under the state's prior family leave law. To clarify this ambiguity, the legislature added RCW 50A.05.125, which states the provisions repealed in Washington's previous family leave law (RCW 49.78) still apply to claims occurring before January 1, 2020. This means that "a cause of action for conduct, acts, or omissions occurring on or before December 31, 2019, under chapter 49.78 RCW, remains available within its applicable statute of limitations" (RCW 50A.05.125(1)). Thus, the legislature made clear that Washington's PFML program "did not sever, impair, extinguish, or in any way affect the rights, liabilities, or obligations under" the state's previous family leave law. Id.

Takeaways for Employers

All employers with employees located in Washington should review the changes to the state's PFML program to ensure compliance with the statute's new definition of family member. Additionally, eligible employers affected by an employee's leave should apply for assistance through the state's new pandemic leave assistance employer grant program. Finally, employers should consult with trusted legal counsel if they have any questions or concerns regarding the legislative changes.

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