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Washington State Passes Paid Family and Medical Leave Law

Summary

On June 30, 2017, the Washington Legislature passed a paid family and medical leave program (Washington Paid Family and Medical Leave, or WPFML) that will be funded by employer and employee premiums and administered by the Washington State Employment Security Department. Paid family leave is available for bonding after the birth or placement of a child under age 18, a family member's serious health condition, or for a military exigency. Paid medical leave is available for the employee's own serious health condition. Like several other new state leave laws, WPFML is both a wage replacement and a leave entitlement, with job protection and maintenance of benefits provisions. Benefits are available to qualified employees beginning January 1, 2020. Premiums will be assessed by the Employment Security Department beginning January 1, 2019.

Covered Employers and Eligible Employees

The WPFML applies to most employers regardless of size, but employers with 50 or fewer employees are exempt from paying the employer share of the premiums. Employers with 150 or fewer employees may apply for grants that will be funded from the state family and medical leave insurance account. Employees are eligible based on hours worked during the qualifying period. The qualifying period is 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. Employees are eligible after working at least 820 hours during the qualifying period.

Definitions

"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, a legal guardian or de facto parent. These definitions are broader than the Family and Medical Leave Act (FMLA) definitions. Impacted employers will have to consider these broader definitions in their leave administration practices. .

"Military exigency" uses the same definition as the federal FMLA and includes leave for short notice deployments, military events, urgent childcare and related activities, and post-deployment activities.

“Serious health condition” is defined the same as in the FMLA and its regulations. A serious health condition is generally an illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice, or residential medical care facility; or (b) continuing treatment by a health care provider. It includes any period of incapacity due to pregnancy or for prenatal care, chronic conditions such as diabetes or asthma, and permanent conditions such as Alzheimer’s disease or terminal cancer.

Duration of Leave

The maximum duration of leave is twelve times the typical workweek hours during a 52-week period for each of family leave and medical leave (a 12 week leave entitlement per year). The combined total of family and medical leave is 16 weeks. An additional two weeks 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.

Amount of Benefit

No benefits are payable during the first 7 days except for leave for birth or placement of a child, which has no waiting period. An employer may allow an employee who has accrued vacation, sick, or other paid time off to choose whether to (a) take such leave; or (b) not to take such leave and receive paid family or medical leave benefits under the program. The benefit amount is a percentage of the employee’s average weekly wage during the two highest quarters in the qualifying period, and is calculated as follows:

- If the individual’s average weekly wage is 50% or less than the state average weekly wage, the benefit is 90% of the individual’s average weekly wage; or
- If the individual’s average weekly wage is more than 50% of the state average weekly wage, the benefit is 90% of the individual’s average weekly wage up to 50% of the state average weekly wage, plus 50% of the employee’s average weekly wage that is greater than 50% of the state average weekly wage.

The maximum weekly benefit is \$1,000 and will be adjusted annually to 90% of the state average weekly wage. The minimum weekly benefit is no less than \$100 per week, except if the employee’s average weekly wage at the time of leave is less than \$100 per week, the weekly benefit is the employee’s full wage.

Funding: Employer and Employee Premiums

The initial premium rate is 0.4% of wages beginning on January 1, 2019, with two thirds of the premium’s rate for medical leave and one third for family leave. In terms of funding the premium, employers may deduct 100% of the family leave premium from employee wages, but only 45% of the premiums due for medical leave. The employer is responsible for the remaining 55% of the medical leave premium. The amount of wages subject to the premium assessment is capped at the maximum amount of wages subject to social security tax. As noted

above, employers with 50 or fewer employees are exempt from paying the employer share of the premiums. If small employers choose to pay the premium, the statute provides for a grant program for these employers.

Job Protection

Employees returning from leave must 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 employees of employers with 50 or more employees, who have worked for the current employer for at least 12 months and for at least 1250 hours during the preceding 12 months (with exceptions for certain highly paid employees).

Health Benefits

If required by the FMLA, the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date the employee commenced family or medical leave until the date the employee returns to employment. 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 provision does not apply to an employee who is not in employment for an employer at the time of filing an application for benefits.

Voluntary Employer Plans in Lieu of State Program

Employers may opt out of either the state program for family leave or medical leave, or both, by having a voluntary plan that meets certain standards. Employers must apply to the commissioner for approval of such plans, for an application fee of \$250. To be approved, voluntary plans must provide benefits that are at least equivalent to benefits 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 provided in the state program with pay and provide monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive under the state program. The voluntary plan must satisfy other conditions as well, including the following:

- payroll deductions may not exceed the deduction for an employee under the state program
- employees must be covered after working 820 hours in the qualifying period and least 340 hours for the current voluntary plan employer
- the employee's job is protected if the employee has worked at least 9 months and 965 hours during the preceding 12 months for the employer
- the employer maintains the employee's existing health benefits as required in the state program

Most existing employer leave policies will need to be amended to comply as a voluntary plan under this new provision.

Penalties

Employees who knowingly and willfully make false statements or representations are disqualified for benefits for a period of time and are subject to monetary penalties. Penalties increase for repeated violations. If the Employment Security Department finds employer violations with respect to the provisions of any voluntary plan, the employer is subject to a schedule of increasing monetary penalties and/or plan termination (if there is a risk benefits will not be paid or for other good cause). Employers who willfully fail to report or pay premiums are subject to increasing penalties.

Coordination of Leave under Other Laws

Leave under the WPFML and FMLA is in addition to any leave for sickness or temporary disability due to pregnancy or childbirth.

Unless otherwise expressly permitted by the employer, leave taken under the WPFML must be taken concurrently with any leave under FMLA.

Notice

Each employer shall 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 certain provisions of the WPFML and information about how to file a complaint. Employers that willfully violate this section may be subject to civil penalties of not more than \$100 for each separate offense.

Collective Bargaining

Nothing in the WPFML requires any party to a collective bargaining agreement in existence on the effective date of the law to reopen negotiations or apply any of the rights and responsibilities under the WPFML until the existing agreement is reopened, renegotiated, or expires. Otherwise, after January 1, 2020, an employee's rights under the law may not be diminished by a collective bargaining agreement or employer policy.

Retaliation

Employers may not deny an employee's rights or discriminate against an employee for exercising his or her rights under the WPFML. It is unlawful for any person to discharge or discriminate against an employee for filing a complaint or initiating a proceeding under the law, or for providing information or testifying in any such matter.

Action Items and Next Steps

Employers should evaluate their existing leave policies in preparation for the WPFML, and investigate the viability of opting out of the WPFML provisions by implementing a voluntary plan. As the effective date approaches, it will be important to update written leave policies, including the eligibility provisions of any SPDs, to reflect any changes. We will be sure to keep you posted on developments. In the meantime, for the complete text of the WPFML, [click here](#). For additional reference on FMLA provisions, [click here](#).

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