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Frequently Asked Questions

Washington Paid Family and Medical Leave (WA PFML) State Plan

Effective January 1, 2020



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OVERVIEW

What is the Washington Paid Family Medical Leave (WA PFML) Law?

The Washington Paid Family Medical Leave (WA PFML) provides paid time away from work that employees may take:

- for their own serious health condition;
- to care for a seriously ill family member;
- to bond with a newborn, adopted, or foster child; or
- for military exigency (as defined by the Federal Family and Medical Leave Act (FMLA)).

WA PFML benefits are available to Washington employees beginning January 1, 2020.

PFML Benefits At-A-Glance

Employee Earnings	Benefit Amount <i>% of Average Weekly Wage (AWW)</i>	Maximum Weekly Benefit	Waiting Period before Benefits Begin	Duration
For employees earning 50% or less of SAWW*	90% of AWW	\$1,000	7 calendar days beginning the Sunday prior to the 1 st day of leave May be satisfied with 8 consecutive hours of leave One Waiting Period per Claim Year (52-week period) The Waiting Period is waived for bonding leave. Effective June 11, 2020, the Waiting Period is waived for military exigency leave.	Up to 12 weeks for any one leave type but no more than a combined annual maximum of 16 weeks, or 18 weeks if medical leave is needed for pregnancy-related disability
For employees earning more than 50% of SAWW:	Sum of: 90% of AWW up to 50% of SAWW PLUS 50% of AWW that exceed 50% of SAWW			

*\$1,255 is the 2020 Statewide Average Weekly Wage (SAWW) as determined by the Washington State Department of Labor & Industries.

Who administers this program?

This program is administered by the Employment Security Department (ESD) of Washington state. Employers also have the option to file an employer-funded Voluntary Plan rather than participate in the state plan through ESD.



Which employers are required to provide paid family and medical leave coverage?

Private and public employers (but not federal employers) with one or more employees working in Washington will be required to provide paid family and medical leave coverage. The requirement applies to out-of-state employers if they have employees working in Washington.

Exceptions:

- Self-employed individuals and federally recognized tribes are not required to have this coverage but may opt in.
- Employees covered under a Collective Bargaining Agreement (CBA) that existed *prior to* October 19, 2017 are not covered for WA PFML unless and until the agreement expires, is reopened or renegotiated.

How long must employees be working to be eligible for WA PFML benefits?

Under the State Plan, employees must work 820 hours or more in the Qualifying Period for a Washington employer. The Qualifying Period is either the:

- First four of the last five completed calendar quarters; or
- Last four completed calendar quarters

May coverage be waived for an employee?

Yes, there are limited circumstances where coverage may be conditionally waived for an employee. Employees must meet three requirements to qualify:

- Employee is physically based outside the state of Washington; and
- Is employed in Washington state on a limited or temporary basis; and
- Is not expected to be employed by any Washington employer for 820 hours or more in a Qualifying Period (four consecutive quarters).

The waiver expires if the employee works 820 or more hours in a Qualifying Period. Both employee and employer must pay missed premiums to Employment Security Department (ESD). Please review <https://paidleave.wa.gov/waivers> for additional details and for a copy of the waiver which may be submitted electronically to ESD.

What is the state plan premium rate?

The 2020 premium rate is 0.4% of an employee's gross wages (not including tips), capped at the Social Security wage limit of \$137,700. The cost of the premium may be split between the employee and employer. The employee's share may not be more than 63.33% of the 0.4% of wages. Employers may elect to pay all or some of the employees' share of the premium. Employers with less than 50 Washington employees are not required to pay the employer's portion of the premium.



When will ESD determine if employers have less than 50 Washington employees?

On September 30 of each year ESD will determine if employers have less than 50 employees by reviewing the average employee headcount over the previous four quarters based on reports provided by the employer. This is not determined based on full-time employee positions. Employers can use this material to calculate if they need to pay the employer portion of the premium.

When are reports and premium due to ESD?

Employers are required to report employees' wages and hours and pay premiums on a quarterly basis—unless there have been no payroll expenses during that quarter. Filing reports and paying premium can be done online with the new Paid Leave account through [SecureAccess Washington](https://secureaccess.wa.gov) (SAW). A new account can be created at <https://secureaccess.wa.gov/myAccess/saw/select.do>.

Reporting and Premium Due – Quarter	Due
Q1: January, February, March	April 30
Q2: April, May, June	July 31
Q3: July, August, September	October 31*
Q4: October, November, December	January 31*

* If the date is a Saturday, Sunday or legal holiday, reports and premium are due the next business day.

EMPLOYER RESPONSIBILITIES

- Learn more**
 Access the Employer Toolkit and other employer resources on the state's website at <https://paidleave.wa.gov/employers>
- Collect and Remit Premiums; Report Employee Wages, Hours Worked and Other Information**
 Every quarter, all employers must complete and file a report and pay premiums to the Employment Security Department.
- Inform employees**
 See the Employer Toolkit on the state's website, <https://paidleave.wa.gov/employers>, for optional sample communications for employee handbooks, employee blog, newsletter or email, as well as a paystub insert/attachment.
- Poster**
 Washington will be making available a required poster for employees in late 2019. We recommend employers periodically check the website (<https://paidleave.wa.gov/employers>) for this document.
- Statement of Rights**
 Employers are required to provide a Statement of Rights to employees. Notice must be provided by the earlier of the: (1) fifth business day after the employee's seventh consecutive day of absence due to a family or medical leave, or (2) fifth business day after the employer becomes aware that the employee's absence is due to family or medical leave. (<https://paidleave.wa.gov/employers>)



ADDITIONAL EMPLOYER RESPONSIBILITIES

Employees are entitled to be reinstated to their same or equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment upon return from WA PFML. This applies if employers have 50 or more employees, the employee is eligible for job protection provided they have worked for employers for 12 months or longer and have worked 1,250 hours in the year to date before the first day of leave.

Employers must continue employees' health benefits while they are on WA PFML. Employers may require that employees continue to pay their health benefits premium contributions. This does not apply to an employee who is no longer employer by the employee at the time of the leave application.

CLAIMS ADMINISTRATION

What are the employee notice requirements to the employer?

If the need for leave is foreseeable, employees must notify the employer in writing at least 30 days prior to the commencement of the leave. Where the need for leave is not foreseeable or 30 days advance notice is not practicable, the leave should be submitted as soon as reasonably possible. Failure to provide proper notice may result in the employee's benefits being denied for a period of time equal to the number of days that the notice was insufficient.

How will employees file a PFML claim?

Employees are able to apply for benefits online at <https://paidleave.wa.gov/apply-now>. The application will include information such as the employee's name, contact information, Social Security Number, birthdate, the type of leave being requested, expected begin and end dates of leave, and the date the employee notified the employer of his intention to take leave.

Is medical or other documentation required for PFML claim submission?

Yes. The documentation required will vary based upon the reason for leave. For example:

- Medical Leave for employee or leave to care of a seriously ill family member – Healthcare Provider Certification of Serious Health Condition form
- New child bonding – Documentation may include Healthcare Provider Certification of Birth, or birth certificate or placement-related court documents
- Military exigency – Documentation such as active duty orders

After a PFML claim is filed, how soon will a decision be made?

If ESD finds that the employee is eligible for benefits, they will send the first benefit payment to the employee within fourteen calendar days after the properly completed application is received.



Can PFML leave be taken on an intermittent basis? What is the minimum leave increment?

PFML leave can be as continuous blocks of time or on an intermittent basis (e.g. every Monday and Tuesday for 6 weeks). However, the minimum leave duration is eight consecutive hours.

Will FMLA automatically run concurrent with PFML?

No, as shown on the next page the eligibility for FML and PFML are not the same so there may be instances where these leaves do not run concurrently. When an employee's absence qualifies under both laws, FMLA and PFML will run concurrently.

How does PFML define family members?

Leave to care for a seriously ill "family member" is permitted under PFML. Family members are defined as spouse, state registered domestic partners, children, parents, grandparent, grandchildren, and siblings. For a fuller description, please see the table on the next page.

Please note that while FMLA defines a child as under age 18 (or 18 or older if incapable of self-care due to a mental or physical disability), there is no age restriction for the child under PFML.

If an employee has a baby in 2019, is he/she eligible for Paid Family Leave (PFL) bonding leave in 2020?

Yes, provided that the PFL leave is taken within 12 months immediately following the child's birth or placement for adoption or foster care.



How does PFML compare with the Family and Medical Leave Act (FMLA)?

Important distinctions between WA PFML and FMLA include but are not limited to those summarized in the table below.

	WA PFML	FMLA
Employer Eligibility	Company with 1 or more Washington employees	Company with 50 or more employees
Employee Eligibility	820 hours in Qualifying Period for a Washington Employer	<ul style="list-style-type: none"> 1 year of service Worked 1,250 hours in the year immediately preceding the leave
Job Protection	Yes. Employee reinstated to same or comparable position with equivalent benefits, pay, and other terms and conditions of employment in effect prior to leave if employer has 50 or more employees and the employee meets same eligibility requirements as FMLA.	Yes. Employee reinstated to same or comparable position with equivalent benefits, pay, and other terms and conditions of employment in effect prior to leave.
Maximum duration	Up to 12 weeks of paid leave within a 12-month period Combined annual maximum of 16 weeks, or 18 weeks if medical leave is needed for pregnancy-related disability	Up to 12 weeks of unpaid leave within a 12-month period as defined by the employer
Eligible leave reasons	<ul style="list-style-type: none"> Employee's own serious health condition To care for a seriously ill family member New child bonding Military exigency 	<ul style="list-style-type: none"> Employee's own serious health condition To care for a seriously ill family member New child bonding Military exigency Military caregiver
Leave increments	Minimum increments of 8 consecutive hours	Partial-day increments permitted with minimum duration defined by the employer
Medical Certification of a Family Member's Serious Health Condition	Medical certification must be requested from a health care provider	Medical certification may be requested from a health care provider
Definition of family member	<ul style="list-style-type: none"> Spouse State Registered Domestic Partner Child (biological, adopted, step, foster, or child to whom employee stands in loco parentis, is a legal guardian or is a de facto parent, regardless of age; also includes daughter-in-law and son-in-law effective 3/25/2020) Parent (biological, adopted, step, foster, de facto or legal guardian of employee or employee's spouse and in loco parentis for employee) Grandparents Grandchildren Sibling 	<ul style="list-style-type: none"> Spouse (includes same-sex and common law) Child (biological, adopted, step, foster, legal ward) Parent (biological, adopted, step, foster, and in loco parentis)
Health benefits	Must maintain existing employee health benefits as if the employee continued to work; Does not apply to former employees	Must maintain existing employee health benefits as if the employee continued to work



If an employee on PFML leave returns to work and then needs additional leave, how will their claim be handled? (Recurrence)

How the new absence is treated will depend on the amount of time the employee returned to work between absences and whether the subsequent leave is for the same qualifying reason and relationship. For example, if the original leave was for the care the employee's mother, a subsequent absence to care for the employee's child would not be considered a recurrence since the employee's relationship with the care recipient is different.

- Periods of leave for the same qualified reason and relationship that are separated by less than 4 months of active work will be treated as the same leave event.
- Periods of leave for the same qualified reason and relationship that are separated by 4 months or more of active work will be treated as separate leave events.
- After return to work, a new period of leave requested for a different qualified reason or relationship will be treated as a new claim.

How will an employer's Short Term Disability (STD) plan coordinate with WA PFML?

Prudential's standard insured STD policies permit loss of time disability income from state mandated programs to be offset from the STD benefits payable. In the case of WA PFML, medical leave is income the employee receives because they are unable to work due to their medical condition, which is loss of time disability income. To the extent that an employee qualifies for both STD and WA Paid Medical Leave at the same time, Prudential would offset or deduct benefits received from WA Paid Medical Leave from the STD Plan.

If an employer has a self-insured STD plan, they should review to determine if the language of the plan permits this type of offset.

Will Prudential direct Washington employees to file for WA PFML with ESD?

Yes. If Prudential is managing an employer's STD plan, as noted above, we will be discussing with the employee that he may be eligible for WA Paid Medical Leave and requesting the ESD determination to appropriately adjudicate the claim.

Additionally, for Prudential's Absence Management Services customers, when the employee initiates their FMLA claim with Prudential we will be able to direct Washington employees to apply for WA PFML benefits with ESD.