CHARTING THE SOLAR SYSTEM:

HOW TO SAFELY NAVIGATE THROUGH ORBITS OF OVERLAPPING LEAVE LAWS

What happens when an employee needs time off work due to their own illness or medical condition, or that of a family member? What about a need for leave due to birth or adoption of a child? Depending on the situation, a variety of leave laws may apply—covering both paid and unpaid leave, and a range of applicable employee rights and responsibilities. The orbits of these various leave laws often overlap, intersecting and diverging in ways that can be difficult to navigate for employees and employers alike.

Each leave journey is different, but when faced with an employee request for leave, it is helpful for an employer to have a navigational chart of the leave law solar system in the employee's state firmly in mind. For employers with more than 50 employees, the leave law with the strongest gravitational pull is usually the Family and Medical Leave Act (FMLA), explained in detail below. Employers with more than 25 employees in Oregon also need to understand the requirements of the Oregon Family Leave Act (OFLA) and where its orbit follows or diverges from FMLA. In Washington, employers of all sizes need to get comfortable navigating the fluctuating path of the state benefit program provided under the Washington Paid Family Medical Leave Act (WAPFML) and understand where its orbit follows or diverges from FMLA, as well as paid sick leave required by applicable state or local law and the employer's own paid-leave policies. Oregon's Paid Sick Leave Law also has its own requirements.[1] Employers also need to be aware of leave requirements that may be required as a reasonable accommodation under the Americans with Disabilities Act (ADA) and equivalent state laws.

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Family and Medical Leave Act (FMLA)[2]

FMLA gives covered employees the right to take an unpaid leave of absence from work for medical or family obligations without jeopardizing their employment. Employers may face questions about whether they are covered, how much leave must be given, and under what circumstances leave is permitted. Many states have separate requirements binding on employers in the area of leave. Those requirements may impose obligations that are more rigorous than those of the FMLA.

Coverage of employers

A private employer is covered under the FMLA if it has 50 or more employees on its payroll for 20 or more calendar workweeks (which do not need to be consecutive) in

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[1] Implementation of Oregon's Paid Family and Medical Leave Insurance (PFMLI) program has been delayed until 2023, and the requirements of that law are beyond the scope of this article.

[2] Material in this section was collected from Family and Medical Leave Act (FMLA) Basics, Practical Law Practice Note 9 505 1339.

either the current or preceding calendar year. Under some circumstances, an employer that does not otherwise meet the 50-employee threshold may be covered by the FMLA when the corporate structure or employment relationship requires counting a broader group of employees toward the 50 person threshold. The FMLA covers public agencies as well as private and public elementary and secondary schools, regardless of whether they meet the 50 employee threshold. The FMLA's special provisions applicable to public and private elementary and secondary schools are outside the scope of this article.

Coverage of employees

The term "employee" under the FMLA is broadly defined as any individual employed by an employer. To be eligible for leave under the FMLA, an employee must have worked for a covered employer for at least 12 months (which need not be consecutive) and must have worked at least 1,250 hours during the 12 months before the first day of the requested leave.

The FMLA does not apply, however, to an otherwise eligible employee if both: (1) the employee works at a facility with fewer than 50 employees, and (2) the employer has fewer than a total of 50 employees within 75 road miles of that facility.

Permitted reasons for taking FMLA leave

FMLA leave is authorized only for reasons recognized by statute. Those reasons are:

- Leave related to pregnancy, childbirth, adoption, and foster care.
- Care for family members with serious health conditions.
- Personal serious health conditions.
- Military qualifying exigency leave.
- Care for a military family member with an injury or illness.

Identifying the 12-month leave period

Generally, the 12-month period may be any 12 month period selected by the employer, including: the calendar year, the year beginning on the employee's anniversary of date of hire, the fiscal year, and a rolling 12 month period. Generally, use of the rolling period minimizes the total leave taken and avoids concerns that the employee will take 12 weeks at the end of one calendar year in addition to 12 weeks at the beginning of a second calendar year (often referred to as leave stacking). If the employer does not designate a means for calculating the 12 month period, the court will choose the one most beneficial to the employee.

Intermittent or reduced-schedule leave

FMLA leave is commonly taken in full-day increments. However, employees may take leave intermittently (taking leave in multiple blocks of time because of a single qualifying reason) or on a reduced-schedule leave (change in employee's work schedule meaning shorter hours per day or per week) if the leave is for:

- Medical necessity related to a chronic serious health condition of the employee or the employee's covered family member that is best accommodated through intermittent or reduced-schedule leave.
- Medical necessity related to a planned or expected medical treatment of a serious health condition of the employee or the employee's covered family member that is best accommodated through intermittent or reduced-schedule leave.
- Medical necessity related to a covered service member's serious injury or illness that is best accommodated through intermittent or reduced-schedule leave (including leave for treatment or recovery from the condition at issue).
- A qualifying exigency relating to covered military service.

- Birth, adoption, or foster care of a child, but only with the employer's consent. If the mother or child has a serious health condition, employer consent is not required.

Employer's notice obligations

Employer notice obligations include three kinds of notice: (1) a notice poster, (2) a notice of eligibility and rights and responsibilities, and (3) a designation notice.

1. Notice poster

A covered employer must post a general notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints. The notice must be legible, use text large enough to be easily read, and be posted prominently. For a model notice poster, see the Employee Rights under the Family and Medical Leave Act Poster from the U.S. Department of Labor (DOL). Notice-posting requirements may be satisfied through electronic means. Covered employers with eligible employees must also distribute the general notice either by (1) including the notice in an employee handbook or other policy guides (or the content of the notice) or (2) providing the notice to new employees at the time of hire (if employers do not maintain handbooks or policy guides).

2. Notice of eligibility and rights and responsibilities

An employer must provide a notice of eligibility and rights and responsibilities within five business days (absent extenuating circumstances) of an employee's request for FMLA leave or the employer's learning through other means of the employee's need for leave that may be FMLA-qualifying. If an employer advises the employee that they are ineligible for FMLA leave, the employer must provide at least one reason why the employee is not currently eligible for the leave.

An employee's eligibility is determined the first time covered leave is requested in the applicable 12 month period. If an employee provides notice of a further need for leave during that period for a different reason and the employee's eligibility has not changed, the employer need not provide a new eligibility notice. If, however, the employee's eligibility status has changed, the employer must notify the employee of the change within five days of the leave request. For a model form, see the DOL's Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act.

3. Designation notice

Once an employer has sufficient information to determine whether an employee's requested leave is FMLA-qualifying, the employer has five business days (absent extenuating circumstances) to provide the employee with a notice stating that the leave (specifying the amount) has been or has not been designated as FMLA-qualifying. However, if the employer requires additional information to determine qualification, the employer must explain what additional information is needed. This notice must be in writing. For a model form, see the DOL's Designation Notice under the Family and Medical Leave Act.

If an employer requires the substitution of paid leave, the designation form must include a statement to that effect. The employer must also advise the employee of the amount of leave that will count against the employee's FMLA-leave entitlement. However, if the amount of leave is not known, the employer must advise the employee of the right to request the amount of FMLA leave that will be counted against the FMLA entitlement once in a 30-day period if leave was taken in the 30-day period.

If an employer fails to comply with its notice requirements, that failure may constitute interference with, restraint of, or denial of

an employee's FMLA rights. An employer may be liable for monetary losses sustained as a direct result of its failure to comply with these notice requirements.

Employee notice requirements

Employees must provide employers with at least 30 days' advance written or verbal notice for foreseeable leave. If 30 days is not possible or if the leave is not foreseeable, notice must be provided as soon as possible. Notice of foreseeable leave is required only once, whether the leave is continuous or on an intermittent or reduced schedule, but the employee must advise the employer as soon as practicable of any scheduled leave changes, extensions, or previously unknown dates.

An employee does not need to specifically assert rights under the FMLA or even mention the statute by name to invoke its protections. The minimum requirement for foreseeable leave is notice that gives the employer sufficient information to determine whether FMLA leave may apply, plus the anticipated timing and duration. The minimum requirement for unforeseeable leave is information sufficient to determine whether FMLA leave may apply (without any reference to timing and duration).

Medical certification for serious health condition

Although not required by the FMLA, an employer can require certification from an employee's or covered family member's health care provider for leave based on a serious health condition. Model forms for an employee's serious health condition and a family member's serious health condition can be found on the DOL's website. The employer can require that the certification be provided within 15 days of the request for leave or as soon as reasonably possible under the circumstances if it cannot be provided within 15 days. If an employee submits a medical certification form that is incomplete or insufficient, the employer must advise the employee in writing regarding what additional information is needed and give the employee seven calendar days (or longer, if necessary, despite employee's diligent good-faith efforts) to complete and return the form. A certification is considered insufficient if it contains information that is vague, ambiguous, or nonresponsive.

- Clarification and authentication of medical certifications

  An employer has a limited right to contact an employee's health care provider to discuss the medical certification form. Specified agents of the employer may contact an employee's health care provider to authenticate information provided on a medical certification form without first obtaining an employee's permission. These agents include: health care providers, HR professionals, leave administrators, and management officials (but not the employee's direct supervisor).

  If the employer has reason to doubt the validity of the certification, the employer may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the employer. If the second opinion conflicts with the first opinion, the employer may require a third opinion, at its expense. The employer is bound by the third opinion. Employers are not permitted to require second or third opinions for military caregiver leave.

- Recertification

  The general rule is that an employer may request recertifications no more often than every 30 days and only in connection with an absence, unless the minimum duration of the condition is more than 30 days. An employer is generally permitted to request recertification once every six months in connection with an employee's

FMLA absence. An employer's request that employees on intermittent leave provide a doctor's note for each absence is tantamount to requesting a medical certification for each absence, which may be in violation of the FMLA.

Recertifications may be requested more often than every 30 days in any of the following circumstances: (1) the employee requested an extension of leave, (2) circumstances stated in a previous certification have changed significantly (for example, duration or frequency of absence or the nature or severity of illness), or (3) the employer receives information casting doubt on continuing validity of the employee's certification.

- Fitness-for-duty certification

  Employers may require employees who are on leave because of their own serious health condition to provide fitness-for-duty certification as a condition of reinstatement. That requirement must be uniformly applied and impose the same requirements on employees sharing the same occupation and same kind of serious health condition. For an employee on intermittent or reduced-schedule leave, an employer may require a fitness-for-duty certification to return up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform job duties.

Employee rights to return to equivalent position

Employees returning after FMLA leave have the right to return to the same position held before the leave or to an equivalent position with equivalent pay, benefits, working conditions, privileges, and status. The equivalent position must involve the same or substantially similar duties and responsibilities, including skill, effort, responsibility, and authority.

Oregon Family Leave Act (OFLA)

OFLA's coverage and eligibility requirements are broader than those under FMLA. Rather than being limited to employers with at least 50 employees, OFLA applies to employers with 25 or more employees working during the current or previous year. Employees are eligible for OFLA-protected leave after working for 180 calendar days (and an average of 25 hours per week during that period), rather than the 12 month and 1,250 hour requirement of FMLA.

In some situations, OFLA provides additional protected leave after FMLA leave is exhausted. OFLA also has a greatly expanded list of "family members" compared to FMLA, providing for protected time off for the serious health condition of not only the employee, spouse, child, or parent, but also grandparents and grandchildren, parents-in-law, same-gender domestic partners and children, and parents of same-gender domestic partners. The attached chart summarizes key differences between the FMLA and OFLA.

State and Local Paid-Sick-Leave Laws

Leave under FMLA and OFLA is generally unpaid, although it may run concurrently with paid leave under employer sick leave, paid time off (PTO), or other paid-leave policies. In establishing and implementing their paid sick leave or PTO policies, employers must be aware of the paid-sick-leave minimums required by Oregon and Washington state law, as well as local ordinances such as Seattle's Paid Sick and Safe Time (PSST) law.

Nearly every employer in Oregon must comply with the Oregon Sick Leave Law. All employers must provide up to 40 hours of unpaid protected sick leave per year. If an employer has ten or more employees in Oregon (six or more in Portland), the sick leave must be paid.

Washington's Paid Sick Leave Law requires employers of any size to provide paid sick leave to all nonexempt employees working in Washington at the rate of one hour of paid sick leave for every 40 hours worked. Exempt employees working outside Seattle are not covered by the state paid-sick-leave-law requirements. Seattle's PSST ordinance is more expansive, covering both overtime-eligible and overtime-exempt employees who work within Seattle city limits (even just occasionally), regardless of the employer's size or location. The amount of paid sick leave varies by employer size, requiring one hour of paid sick leave for every 40 hours worked for employers with fewer than 250 employees, and one hour of paid sick leave for every 30 hours worked for employers with more than 250 employees.

Washington Paid Family Medical Leave (WAPFML)

For employers in Washington, the most complicated leave law to navigate may be WAPFML, given the many points at which its orbit intersects and diverges from other leave laws and employer-provided paid-leave policies. Unlike paid-sick-leave laws, WAPFML does not require employers to provide additional paid leave to employees, but rather is an insurance program run by the Washington Employment Security Department (ESD), similar to unemployment compensation. Washington employees (and employers with more than 50 employees) have been paying required premiums into the program through payroll deductions since 2019, and employees have been eligible to receive benefits under the program since 2020.

Coverage

WAPFML applies to all employees working in Washington, regardless of employer size. Unlike FMLA, WAPFML benefits travel with the employee and do not require that an employee work for a certain amount of time at their current employer before being eligible to take leave. The eligibility floor for WAPFML benefits is simply that an employee has worked for any combination of employers in Washington for at least 820 hours during a four-quarter qualifying period.

Permitted reasons and available leave

WAPFML benefits are available for eligible employees for most of the permitted reasons for FMLA leave under federal law. An employee can receive WAPFML benefits for medical leave for the employee's own serious health condition, including medical events related to pregnancy or childbirth. Family-leave benefits are available for an employee caring for a family member with a serious health condition, as well as bonding leave after the birth, adoption, or foster placement of a child. WAPFML's definition of "family member" is significantly broader than the immediate family members covered by FMLA, including grandchildren, grandparents, parents-in-law, and siblings, and even de facto family-like situations in which the employee's living situation or relationships creates an expectation that the employee provide care for someone who is dependent on the employee for care. Similar to FMLA, WAPFML benefits are also available for a qualifying military emergency and leave related to deployment of an active-duty military spouse.

Eligible employees may receive up to 12 workweeks of WAPFML benefits for either medical or family leave in a "claim year" (52 weeks measured from the employee's initial application for benefits) and up to 16 weeks of benefits if both medical and family leave are needed in the same consecutive 52 week period. Benefits may be extended up to a total of 18 weeks of combined medical and family leave if an employee has a pregnancy-related medical condition that results in incapacity, such as being put on bed rest or having a C section. A new claim year is started at the end of

the consecutive 52 week period, and the employee's leave entitlement begins again for the new claim year.

WAPFML leave may be taken on an intermittent or reduced-schedule basis. The total hours of leave available to an eligible employee during a claim year is determined by the number of hours previously worked by the employee during a typical workweek times the maximum number of workweeks available for the employee's claim. This is usually 12 workweeks for either family- or medical-leave reasons, but may be up to 16 workweeks if both types of leave are used in a claim year, or even 18 workweeks when an employee suffers significant complications from pregnancy or childbirth.

WAPFML Benefits

12 workweeks

- Employee's Medical Condition
- Child Bonding
- Care of Family Member
- Military Exigency

16 workweeks

- Employee Medical and Family Leave Combined

18 workweeks

- Serious pregnancy/childbirth complications followed by child

Benefits

Once approved by ESD, an employee's weekly WAPFML benefit will be approximately 60-90% of the employee's regular average weekly wage, up to a weekly benefit cap, which is updated yearly. For claims started in 2021, the maximum weekly benefit amount is $1,206 per week. For new leave claims started in 2022, the weekly benefit cap will increase to $1,327 per week. Benefits for family or medical leave taken on an intermittent basis are prorated by the percentage of hours on leave compared to the number of hours in the employee's typical workweek prior to the leave.

An eligible employee is able to start receiving WAPFML benefits after a waiting period of seven calendar days from the start of the employee's medical or family leave. The waiting period does not apply to family leave for child-bonding or military-exigency reasons. The waiting-period requirement is satisfied as long as the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family- or medical-leave claim. The employee may receive employer-paid sick leave or PTO during the waiting period without extending the waiting period or affecting the employee's subsequent WAPFML benefit amount.

Employee chooses when to take WAPFML benefits

Unlike FMLA, WAPFML is set up to allow the employee maximum flexibility as to when they apply for WAPFML benefits and how they choose to coordinate their WAPFML leave with employer-provided paid-leave benefits and unpaid FMLA leave. If a FMLA-eligible employee is able to afford a period of unpaid leave, the employee can wait to apply for WAPFML-leave benefits until part or even all of the 12 weeks of their designated FMLA leave is exhausted, and take their full allowed amount of WAPFML leave at that point.

The WAPFML scheme also differs from FMLA leave with respect to concurrent use of employer-provided paid-leave benefits. While FMLA allows employers to require employees to use some or all of their available paid leave concurrently with FMLA leave, the same is not true for WAPFML. Employees may choose to use employer-provided paid leave first

and wait to apply for WAPFML benefits, or they can use WAPFML benefits first and save their accrued paid leave to use later. Employers may not dictate the order of the leave.

Employers may allow, but not require, employees to use employer-provided paid-leave benefits to supplement or "gross up" their WAPFML benefits to their regular weekly pay amount. Employer-provided "supplemental benefits" may include salary continuation, sick leave, or other PTO. PTO is any "paid leave offered by an employer under the employer's established policy," including vacation, medical leave, sick leave, personal leave, and compensatory time. When using PTO or salary continuation to gross-up an employee's pay, the employer should clearly designate the payments as "supplemental benefits." Otherwise the leave pay received from the employer during the week will reduce the employee's WAPFML benefit from ESD for that week.

Notice obligations

- Employer notices of WAPFML rights

  Employers are required to inform their employees about the WAPFML benefit program by posting an ESD-approved notice in the same place as other employment-related notices in the workplace. This mandatory poster is included at the end of this paper and available to download in English or Spanish from the ESD website: WAPFML Employer Roles and Responsibilities. After learning of an employee's need for leave, the employer must provide the employee with a written statement of the employee's WAPFML rights. The rights notice must be provided within five business days after the employer learns that the employee's absence is due to family or medical leave, or within five business days after the employee has been absent from work for seven consecutive days due to family- or medical-leave reasons. The ESD-approved statement may be downloaded at WAPFML Statement of Employee Rights, and a copy is included at the end of this article.

- Employee notice of need for leave

  WAPFML requires that employees give their employer written notice of their need for leave at least 30 days in advance of the expected start of the leave. However, if the reason for the leave was not foreseeable, the 30 day requirement does not apply, but the employee is expected to notify the employer as soon as possible after learning of the need for leave.

Job-protection rights

Small employers (fewer than 50 employees) are not obligated to restore an employee's job at the end of their WAPFML leave.

Employees of larger employers (50 or more employees) will have job-restoration rights if they meet the required employment-tenure and hours minimums. WAPFML job-restoration standards are basically the same as FMLA—the employee must have been employed by the same employer for at least 12 months before the leave (not necessarily consecutive months) and have worked at least 1,250 hours for that employer during the 12 month period immediately before the leave. An employee who meets both criteria must be restored to their previous position or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Job restoration may be denied for certain highly paid employees if restoration would cause substantial and grievous economic injury to the employer, and the employee does not return to work after receiving the restoration denial notice from the employer.

Similar to FMLA, an employee taking WAPFML leave should not lose any employment benefits accrued prior to

taking leave, but is not entitled to continue to accrue seniority or employment benefits during the leave or receive promotions or other job opportunities the employee would have received if they had not been out on leave.

Also similar to FMLA, larger employers (50 or more employees) must continue the availability of health insurance benefits for the full length of the employee's WAPFML leave, even if that leave exceeds the 12-week FMLA period. As with FMLA, if the employee shares the cost of existing health benefits, the employee remains responsible for the employee's share during leave.

WAPFML also includes strong anti-retaliation protections. It is unlawful for employers to interfere with, restrain, or deny an employee's rights to leave or benefits, or to discharge, discriminate or retaliate against an employee for exercising their WAPFML rights, or for filing a complaint, initiating a proceeding, providing information, or testifying in any WAPFML proceeding. Employees who believe their WAPFML rights have been violated may file a complaint with ESD or bring a private cause of action against their employer. An employee who prevails in a private action may be awarded attorney fees as well as damages. Damages may include the actual lost wages, lost benefits, or other lost compensation, including prejudgment interest. If no wages were denied, an employee may recover actual monetary losses related to the violation (such as the cost of paying someone to provide care to the family member that the employee would have provided if leave had been granted), up to a sum equal to the employee's wages for 16 weeks. If the employer's violation is willful, a double-damages penalty may be assessed and paid to the employee.

Don't Forget About the ADA

Even after an employee has exhausted all available leave under applicable federal and state leave laws and the employer's paid-leave policies, their leave journey may not be over. The ADA and similar state laws prohibiting discrimination against employees with disabilities have larger orbits than FMLA, OFLA, WAPFML, and most employer-provided paid-leave policies, and reasonable-accommodation journeys along the ADA orbit may be quite lengthy. If an employee is not able to return to work at the end of an approved leave period, their employment should not be terminated without first consulting with the employee and their health care provider to assess whether additional leave may be required as a reasonable accommodation for a disability. Employers need not allow indefinite leave, but they must participate in the interactive process with the employee to determine whether the employee will be able to return to work and perform the essential functions of their job after some additional specific leave period that does not cause undue hardship to the employer. For more information on the reasonable accommodation process, see the seminar paper entitled *Guardians of the Qualified: Clarifying Disability & Religious Accommodations*.

FAMILY AND MEDICAL LEAVE ACT (FMLA) AND OREGON FAMILY LEAVE ACT (OFLA)

SUMMARY COMPARISON OF KEY DIFFERENCES

	FMLA	OFLA
Employer Coverage	• Employers with at least 50 employees in the country.	• Employers at least 25 employees in Oregon.
Employee Eligibility	• Employee has worked at least 12 months (which need not be consecutive). • Has worked at least 1,250 hours in the last 12 months. • Employee works for employer with at least 50 employees within a 75 mile radius of employee's worksite.	• Employee has worked for a period of 180 calendar days immediately preceding the date on which leave begins. • Employee has worked an average of 25 hours per week during the 180 day period (unless leave is for care of a newborn child or adoptive child).*

Permitted Leave Reasons	• Leave related to pregnancy, childbirth, adoption, and foster care.
	• Care for family members with serious health conditions.
	• Personal serious health conditions.
	• Military qualifying exigency leave.
	• Care for a military family member with an injury or illness.
		• Qualifying exigency leave and military-caregiver leave not covered.
		• Definition of family member is broader than FMLA.
		• Additional protections include:
		    • Bereavement leave.
		    • Leave to care for a sick child who does not have a serious health condition, but requires home care.

* Effective January 1, 2022, OFLA is amended to expand eligibility for employees who, within 180 days, are either reemployed after a separation from employment or return from work after a temporary cessation of work. Such employees who were eligible for OFLA leave at the time their break in service began will be eligible for OFLA leave immediately upon returning to work. Employees who were not eligible for OFLA leave at the time their break began will be entitled to credit for time worked before the break in service. Additionally, beginning January 1, 2022, during a period of public health emergency, all employees of a covered employer will be eligible for OFLA if they have (1) been employed for at least 30 days immediately before the leave starts and (2) worked an average of at least 25 hours per week during the 30-day period.

	FMLA	OFLA
Length of Leave	• Maximum of 12 weeks of leave per year for most purposes. • Up to 26 weeks of leave per year to care for a military family member.	• Generally limited to 12 weeks per year, subject to following exceptions: ◦ Female employee who takes any pregnancy disability leave is allowed an additional 12 weeks for any OFLA purpose. ◦ Male or female employee who has taken a full 12 weeks of parental leave (e.g., to care for a newborn, newly adopted child, or newly placed foster child) is also entitled to take up to an additional 12 weeks' leave to care for a child with a nonserious health condition requiring home care.
Reinstatement Rights	• Reinstatement to either original position or an equivalent position is allowed.	• Reinstatement to original position required if position still exists. If the original position has been eliminated, reinstatement to any available equivalent position.

Paid time off.
Peace of mind.

Paid Family and Medical Leave provides paid time off when a serious health condition prevents you from working, when you need to care for a family member or a new child, or for certain military-related events. It's here for you when you need it most, so you can focus on what matters.

How it works

Nearly every Washington worker—whether you work full time or part time in a small to large business—is eligible for up to 12 weeks of Paid Family and Medical Leave. You need to work 820 hours in Washington, or about 16 hours per week, over the course of about a year. You can get up to 16 weeks if you have family and medical events in the same year, or up to 18 weeks in some cases. Leave doesn't have to be taken all at once. You can use these weeks within your "claim year," which starts when you apply and then runs for the next 52 weeks. When that claim year expires you can then be eligible for leave again.

You apply for leave with the Employment Security Department and will get partial wage replacement, up to 90 percent of your typical pay, capped at **$1,206** per week.

Your rights

If you meet the requirements, you have the right to take paid time off using Paid Family and Medical Leave.

If you qualify for Paid Family and Medical Leave, your employer cannot prevent you from taking it. Your employer also cannot require you to use other types of leave, such as sick or vacation days, before or after taking Paid Family and Medical Leave. The program is funded by premiums shared between workers and many employers. The premium is 0.4% of your wage. You may pay about 2/3 of that total, and your employer (if they have 50 or more employees) pays the rest. A calculator to estimate premiums is available on our website.

To file a complaint against your employer about Paid Family and Medical Leave, email or call our Customer Care Team at paidleave@esd.wa.gov or (833) 717-2273.

You may also contact the Office of the Paid Family and Medical Leave Ombuds. The Ombuds is appointed by the governor and serves as a neutral, independent third party to help workers and employers in their dealings with the Department. The Office of the Ombuds investigates, reports on and helps settle complaints about service deficiencies and concerns with the Paid Family and Medical Leave program. Learn more at www.paidleaveombuds.wa.gov or call the Ombuds' office at 844-395-6697.

Learn more and apply at
paidleave.wa.gov

Washington
Paid Family & Medical Leave

Employment Security Department
WASHINGTON STATE

Washington
Paid Family & Medical Leave
Employment Security Department

Employer requirement to provide notice to employees

Employers with employees working in Washington state must provide the following notice to employees who may be eligible for Paid Family and Medical Leave the later of:

- Five business days after an employee's seventh consecutive day of absence due to family or medical leave, or
- Five business days after an employer becomes aware that the employee's absence is due to family or medical leave.

Paid Family and Medical Leave

Statement of Employee Rights

You may qualify for Paid Family and Medical Leave
As of Jan. 1, 2020, Washington employees who have worked 820 hours or more in the qualifying period and experience(d) a qualifying event have access to Paid Family and Medical Leave.

Employees who have missed work due to family or medical reasons may be eligible for paid family or medical leave for the following qualifications:

- Care for and bond with a child younger than 18 following birth or placement
- Care for yourself or a family member experiencing a serious health condition
- Certain military-connected events.

Paid Family and Medical Leave requires that you give your employer(s) written notice at least 30 days in advance of when you plan to take leave. However, if the reason you need leave was not foreseeable, you may notify your employer(s) as soon as possible.

The Paid Family and Medical Leave Benefit Guide provides information on how to apply for benefits and submit weekly claims. It also explains your rights and responsibilities under the law. Download the guide at www.paidleave.wa.gov/benefit-guide.

For more information about how to apply, contact us at 833-717-2273 or visit www.paidleave.wa.gov.

Important information for when you apply

Employer UBI #: _______________

This employer offers supplemental benefits: Y __________ N ____________

Note: Except during the waiting week, employees cannot use employer provided paid time off at the same time as Paid Family and Medical Leave, unless the employer chooses to offer a "supplemental benefit." Supplemental benefits can be used along with Paid Family and Medical Leave to provide additional pay while an employee receives partial wage replacement through Paid Leave benefits. Employees may accept or reject supplemental benefit payments.