

Washington Enacts Paid Family and Medical Leave Law

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All Washington employers must provide paid family and medical leave under a bill signed by Governor Jay Inslee on July 5, 2017.

The new law creates an insurance fund that employers and employees both pay into, with a 0.4 percent payroll tax. Payroll deductions will begin on January 1, 2019, and benefits will become available to employees on January 1, 2020.

Washington joins a handful of other states (California, New Jersey, Rhode Island, and New York) to have enacted paid family leave law.

Affected Employers

The law applies to all private and most public employers in Washington.

Employers with fewer than 50 employees working in Washington need not pay the employer portion of the premiums.

Employers with up to 150 employees may apply for grants to offset wage costs while an employee is on leave.

Employers can opt out of the state-run program if they have a comparable plan and pay a \$250 fee to the Employment Security Department.

Employers may request a waiver of the premium requirement for employees who are:

- physically based outside of Washington,
- employed in Washington on a limited or temporary work schedule, and
- not expected to work in Washington for at least 820 hours during a “qualifying period.”

“Qualifying period” means the first four out of the last five completed calendar quarters or, if eligibility is not established, the last four completed quarters immediately before the employee applies for leave.

Affected Employees

The law applies to all employees working in Washington, except for those of the federal government. An employee is eligible if he or she worked at least 820 hours during a “qualifying period.”

For now, unionized workforces with a collective bargaining agreement are excepted from the law. However, the law will apply to unionized workforces when the existing CBA expires or when it is reopened or renegotiated by the parties.

Leave Specifics

Leave—Each year, employees are entitled to:

- 12 weeks of family or medical leave; or
- 14 weeks of medical leave if the employee experiences a pregnancy-related serious health condition that results in incapacity; or
- 16 weeks of combined family and medical leave; or
- 18 weeks of combined family and medical leave if the employee experiences a pregnancy-related serious health condition that results in incapacity.

Waiting period—There is a seven-day waiting period for benefits. However, there is no waiting period if an employee takes leave for the birth or placement of a child.

Funding—Employers and employees both pay into the paid leave program through payroll deductions. The total premium is 0.4 percent of an employee’s wages, to which the employer and employee must contribute.

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Benefits—The benefit amount varies, depending on whether the employee earns more or less than the state's average weekly wage.

Job protection—When employees return from leave, they are entitled to be returned to the same or an equivalent job. They also are entitled to have available the same employment benefits that they accrued before taking the leave.

Bases for leave—Like the federal Family and Medical Leave Act, the bases for leave under the new state law include:

- a serious health condition of an employee or a member of his or her family;
- the birth, adoption, or foster placement of a child;
- a qualifying military emergency; and
- when employees learn that their military spouses are called to active duty.

Enforcement

The Employment Security Department has authority to investigate alleged violations of the law, make conclusions of fact and law, and levy penalties and fines against employers and damages in favor of employees.

The Employment Security Department will be revising its posters to include notice of the law. These posters must be conspicuously posted at the workplace.

For more details about the law and how to prepare for compliance, please contact Jackson Lewis.

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