

PAID FAMILY MEDICAL AND COVID EXPANDED LEAVES



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Workshop Goals and Agenda

□ Goals

- Confidence in navigating the process
- Strengthened relationships with employees

□ Agenda

- Nuts and bolts of PFML and COVID expanded leaves
 - Expanded leaves Q&A:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Intersections with WC, UI, ADA
- PFML information available and processing gaps
- Q&A with Edsonya Charles, the PFML Ombud



Disclaimer

- ❑ This presentation is based on information assembled from publications provided by relevant government agencies. Nothing shared during the webinar should be construed as legal advice.



Covered Employer

Paid Family Medical Leave

- ❑ All employers are covered
 - Employers < 50 employees may opt out contributing premiums, but can't access [small business grant](#)
 - Voluntary plan approved by the ESD
- ❑ Employee count: ESD averages 4 Qtrs employee count after 9/30 each year

Expanded PSL & FML

- ❑ Employers with < 500 employees Q&A 39
- ❑ Exemption for business viability reason if employer has < 50 employees
 - Q&A 4, 58, 59
- ❑ Public employers Q&A #52-54
 - Non-federal - covered
 - Fed – mostly not covered



Employer requirements

Paid Family Medical Leave

- ❑ Deduct and remit premiums
 - Can't cure failure to deduct accurately WAC 192-510-065
- ❑ Poster notice (50A.20.020)
- ❑ Notify rights by 5th business day after 7 days of consecutive absence (50A.20.010)
- ❑ Confidentiality of record & recordkeeping for 6 years (50A.20.030)

Expanded PSL & FML

- ❑ Poster in every building, email/direct mail, website
 - <https://www.dol.gov/agencies/whd/pandemic>
- ❑ Not required to provide other languages available
- ❑ Notify new/current employees
- ❑ Cannot require employee to find a replacement



Benefit Funding Source

Paid Family Medical Leave

- ❑ Insurance premiums (0.4% gross wages) (50A.10.030)
 - Employee premium share: 1/3 Family, 2/3 Medical
 - Employer shares 55%
- ❑ Annual rate adjust starts in 2021 (RCW 50A.10.030(6))

Expanded PSL & FML

- ❑ Employer pays wages



Government Assistance

Paid Family Medical Leave

- ❑ [Small business grant](#)
 - Size <= 150 employees
 - \$1,000 for significant wage related costs
 - Up to \$3,000 for hiring a temporary worker for 7 or more days
 - Up to 10 grants each calendar year per employer
 - Available if employer contributes to premiums
 - Grants coming soon

Expanded PSL & FML

- ❑ Claim credit via payroll taxes offset and IRS refund
 - Wages, health benefits
 - No payroll tax liability on leave wages
 - Apply credit against employer federal taxes
 - <https://www.irs.gov/coronavirus/new-employer-tax-credits>
- ❑ Not available with PPP loan
 - May change depending on Congress



PFML reportable wages

- All wages paid including
 - Cash value of goods, services, prizes
 - Commission, piecework, bonuses, stipends
 - Compensation unrelated to expense reimbursement
 - RCW 50A.05.010(25)(a)
 - WAC 192-510-025(1)
- Max limit on wages = Social Security wage base
 - \$137,000 in 2020
 - Premium calculator (still using 2019 maximum @ \$132,900)
 - <https://resources.paidleave.wa.gov/premium-calculator>



Benefit effective date and # of events per year

Paid Family Medical Leave

- ❑ Benefit starts 1/1/2020
- ❑ More than 1 event per year is allowed
- ❑ For each leave event, must use within 12 months and can't carry over

Expanded PSL & FML

- ❑ Effective
 - April 1 to Dec 31 2020
- ❑ More than 1 event per year is allowed



Employee definition and exemptions

Paid Family Medical Leave

- ❑ All employees (corp officers & domestic workers)
- ❑ Exempt (opt-in available)
 - self-employed
 - Member of an LLC, joint venture, partnership
 - Independent contractor
 - Tribal
 - Out-of-state worker: apply premium waiver 50A.10.040

Expanded PSL & FML

- ❑ FT/PT in the US and US Territories Q&A #48, 49
- ❑ Includes temporary, on leave, jointly employed regardless of payroll record responsibility, day laborers
 - Q&A #2
- ❑ May exempt from coverage: healthcare workers and first responders Q&A 38, 56, 57



Authorized leaves

Paid Family Medical Leave

- ❑ Medical: worker's own serious health condition
- ❑ Family: family's serious health condition or
 - Bonding within 12 months of a child's birth or placement
- ❑ Military family needs
- ❑ 12 months per year
 - Giving birth 16 weeks (med and family combined)
 - Pregnancy incapacity 2 more weeks

Expanded PSL & FML

1. Quarantine order Q&A #60
2. Self-quarantine advice by a health care provider Q&A #62
3. COVID symptoms seeking a medical diagnosis
4. Caring for other(s) in #2, 3
 - Q&A #63-65
5. Experiencing substantial COVID conditions per HHS
6. Caring for child due to school/place of care closure
 - **#6 is valid only for EFML**



To qualify for benefits

Paid Family Medical Leave

- ❑ Worked 820 hours
 - First 4 out of 5 most recent completed quarters or the 4 most recent quarters
 - Could be with multiple employers

Expanded PSL & FML

- ❑ Sick leave (80 hours) does not require work history
- ❑ Family leave (caring for child due to school/place of care closure)
 - Employed 30 calendar days



Initiating benefit

Paid Family Medical Leave

- ❑ Employee may apply without employer's agreement
- ❑ Notify employer in writing:
 - 30 days before leave if foreseeable
 - As soon as practicable
 - May result in denial for failure during late period
 - WAC 192-600-005, 015, 020, 025, 030

Expanded PSL & FML

- ❑ Agreement between employee and employer
- ❑ Employer documentation
 - Name of employee
 - Dates of leave requested
 - Reason for leave
 - Statement from employee
 - Entity or health provider's quarantine order document
 - Q&A #15



PFML Employee benefits & waiting period

- ❑ Waiting period: 1st week after leave approval
 - No waiting period for bonding leave
- ❑ Up to 90% of pay; current maximum is \$1,000/week
 - Maximum is 50% of statewide average weekly wage
 - Estimator: <https://paidleave.wa.gov/estimate-your-weekly-pay/>
 - Current: \$77,900 annual income receives max benefit
- ❑ Minimum 8 hours of consecutive leave per week to receive benefit (may consists more than 1 shift)



Expanded PSL/FML maximum benefits and waiting period

- ❑ Expanded paid sick leave – 80 hours max/2 weeks
 - No waiting period
 - For reasons under #1-3 – 100% of wages
 - ❑ Capped at \$511/day; \$5,511 total
 - For reasons under 4-6 – 2/3 of wages
 - ❑ Capped at \$200/day; \$2,000 total
- ❑ Expanded FML – 10 weeks max
 - 2 weeks waiting period (EPSL usage qualifies)
 - Valid only for reason #6
 - Capped at \$200/day; \$10,000 for 10 weeks



Expanded PSL/FML benefit calculation

- Average work hours of last 6 months
 - FLSA calc standard; Q&A #8
- If hours fluctuate Q&A 80-85
 - 6 months' average hours
 - If work history < 6 months, use initial agreed work hours
 - If no initial agreement, avg hours/day of work history
 - May include OT as base pay (80 hours max for the 2 weeks of PSL)
- If work hours reduced, use work schedule history
 - Q&A #5, 28



Supplemental benefits

Paid Family Medical Leave

- ❑ Employer may choose to offer w/out reducing PFML benefit pay
 - WAC 192-500-180
- ❑ Should draft policy language
 - Which PTOs, short-term disability to include
 - Receive more than usual earnings

Expanded PSL & FML

- ❑ Employer may choose to pay beyond required wages Q&A #31,34
 - Excess payment portion cannot claim tax credit
- ❑ Employer mandates use of PTOs to supplement?
 - Not for EPSL Q&A #32
 - Yes for EFML if a policy exists Q&A #33



Family member criteria

Paid Family Medical Leave

- ❑ Child (biological, adopted, foster, step, legal guardian/ loco parentis); “in-law” Jun 2020
- ❑ Parent/parent in law
- ❑ Spouse (registered domestic partner)
- ❑ Grandchild, grandparent
- ❑ Sibling

ESD may request verification WAC 192-610-035 – subject to tips & leads; not clear on standard

Expanded PSL & FML

- ❑ Same as FML
 - Q&A #40 or
 - WHD Fact Sheet 28B
- ❑ Care for others’ with COVID condition: those with relationships or with the expectation to care Q&A #64
- ❑ Includes caring for child (18 or older) with disability incapable of self-care WHD 28K



Intermittent leave

Paid Family Medical Leave

- ❑ Yes - a minimum of 8 hours of consecutive leave each work week
 - 8 consecutive hours may consist of more than 1 shift
- ❑ Use within a year and can't carry over to next year
 - <http://paidleave.wa.gov/find-out-how-paid-leave-works/>
 - RCW 50A.15.020(2); WAC 192-620-035

Expanded PSL & FML

- ❑ Teleworking if employer and employee reaches an agreement
 - Q&A #20
- ❑ COVID symptom leaves and working at usual worksite must be in full-day due to exposure Q&A #21
 - Exception: caring for child(ren) & employer agrees



Job restoration and health benefit

Same as FMLA in general

Paid Family Medical Leave

- ❑ Health benefit 50A.35.020
- ❑ Job: same or equivalent position
 - 50A.35.010; 192-700-005
 - Only if => 50 employees and
 - ❑ Worked => 12 months and => 1,250 for current employer
 - ❑ RCW 50A.35.010(6)

Expanded PSL & FML

- ❑ Same as FMLA
 - US DOL Wage and Hour Division Fact Sheet #28A
- ❑ If leave starts during employee's health benefit waiting period, no change to receiving benefit. Q&A #51



Employee's right to dispute or file complaints

Paid Family Medical Leave

- ❑ For interference, discharge or discrimination for using leave WAC 192-570-020
- ❑ Limited private right of action available
 - 2020 - HB 2614 Sec. 17

Expanded PSL & FML

- ❑ First discuss with employer to resolve
- ❑ Wages and Hour Division of the US Dept of Labor
 - 1-866-487-9243



Employer's right to protest PFML

- ❑ Yes. Information included in
 - Claim notification and determination letters
 - No such information on website or toolkit yet
- ❑ 18 days from first notice
 - RCW 05A.050.020(2), 50A.10.050(1), 192-610-060
- ❑ 30 days from determination
 - WAC 192-500-040, 192-630-005, RCW 50A.50.010
- ❑ Employer may provide information to contest



Tuesday, April 7 2020

Benefit Application Decision

██████████ and ██████████ applied for paid family or medical leave.

We have approved this application for benefits. This employee is approved for leave from 4/5/2020 through 10/7/2020. The number of hours of leave this employee can take is limited. The employee may take this leave consecutively or intermittently.

Appeal Process: If you disagree with this decision, you must file an appeal by 5/7/2020. The employee can also appeal the decision and you will be notified if they do.

If you would like to appeal this decision, please mail or fax a letter to us that includes:

- Your name, business name, address and phone number.
- Your employee's customer ID or the last four digits of their Social Security number
- The decision you're appealing and an explanation of your disagreement with the determination.
- Your signature, or the signature of your authorized representative. Unsigned appeals will be returned.
- Mail or fax your appeal to:

Employment Security Department
Paid Family and Medical Leave Care Center
P.O. Box 19020
Olympia, WA 98507-0020
Fax: 833-525-2273

Once we receive your complete appeal, we will send it and all information related to our decision to the Office of Administrative Hearings (OAH). OAH will schedule a hearing and send you a Notice of Hearing, including the date and time.

Questions

If you have any questions, please contact us at 833-717-2273 or paidleave@esd.wa.gov.

Thank you,



Intersection with Workers' Comp

Paid Family Medical Leave

- ❑ Cannot use concurrently
 - RCW 50A.15.100(2)
- ❑ Relieve guilt of some employers who may allow workers' comp for non-work related events

Expanded PSL & FML

- ❑ Kept on Salary or Light Duty
 - Employer may consider claiming tax credit if the IW has one of the six qualifying events
 - <https://www.irs.gov/coronavirus/new-employer-tax-credits>



Intersection with FMLA

Paid Family Medical Leave

- ❑ Unless permitted by the employer, must take currently with FMLA
 - RCW 50A.15.110(2)
 - When employee initiates PFML, employer could document it as FMLA.
 - Employee uses FMLA first may initiate PFML thereafter
- ❑ Employer's agreement to initiate benefit not required

Expanded PSL & FML

- ❑ Priority over FMLA for covered employer with qualifying reasons
- ❑ FMLA may start when expanded leaves are used up



Intersection with unemployment benefit

Paid Family Medical Leave

- ❑ Cannot use concurrently
 - RCW 50A.15.100(2)
- ❑ May use when unemployed with no UI benefit and with
 - qualifying events and
 - worked 820 hours in the qualifying period
 - <https://paidleave.wa.gov/more-answers/>

Expanded PSL & FML

- ❑ Cannot receive both concurrently



Intersection with Disability Protection

American Disabilities Act; WA Law Against Discrimination

- ❑ ADA applies => 15 employees
- ❑ WLAD applies => 8 employees
 - [COVID and Compliance with Non-Discrimination Laws](#)
- ❑ Asking employee's "general health diagnosis" is a disability inquiry prohibited by the ADA
 - Let the employee disclose their "serious health condition" re PFML leave
 - "Health condition" records are confidential or an ADA violation



COVID/Pandemic and ADA

- CDC data supports COVID meeting the **direct threat**” condition under a pandemic (public health)
https://www.eeoc.gov/facts/pandemic_flu.html
 - May send employees home (reasonable accommodation does not apply except for pre-existing disabilities)
 - May ask for symptoms; must keep medical record confidential to comply with the ADA
 - May take temperature and/or ask employee to self-quarantine after traveling to pandemic areas



Paid Leave Ombuds

an independent third party

- ❑ Edsonya Charles, Edsonya.Charles@esd.wa.gov
 - <https://paidleaveombuds.wa.gov>
 - 844-395-6697
- ❑ Investigates, reports on and helps settle complaints
- ❑ Identifies and eliminates service deficiencies
- ❑ Make recommendations/address concerns as quickly and efficiently as possible
- ❑ Confidentiality unless required by law
- ❑ Advocates, not lawyers/legal representatives
- ❑ Ombuds info on employee's guide, not employer's





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