

Issue Brief

Association of Washington Business

Paid Family & Medical Leave: Detailed Overview

The law is the result of months of negotiations between labor, employers and lawmakers, and passed with bipartisan support.

This is a detailed overview of the 2017 Paid Family Leave law, Senate Bill 5975. It outlines the benefits provided to employees to take paid time off work to care for a newborn, treatment or recovery from a serious illness, or to care for a family member (same as federal Family and Medical Leave Act, or FMLA, provisions). It also outlines the oversight and administration, employer and employee cost sharing, provisions for small businesses and the Unemployment Insurance provisions within the law.

Who is in the Program

- All employees are in the program, including those at small businesses;
- Employees at employers with less than 50 employees will pay premiums in the same amount they would if at large employers, but these employers will not be required to pay premiums. These employers may choose to pay the employer share of premiums and then be eligible for business assistance – the employer must stay in the program for a minimum of 3 years;
- To qualify, an individual must work for 820 hours in four of the last five quarters;
- Independent contractors and self-employed may opt-in. They would be required to pay 100 percent of the premiums, and must opt-in for at least 3 years (consistent with voluntary opt-ins for the state Unemployment Insurance system); and,
- Employers with an equal or better paid leave plan may waive out of the disability leave bucket, paid family leave bucket, or both.

Who Pays and How Much

- The total premium share (or cost) of the program will be covered 37 percent by the employer and 63 percent by the employee;
- For disability leave, premiums will be split at 55 percent cost to employer and 45 percent cost to employee;
- For family leave, premiums are 100 percent employee paid;
- The state Employment Security Department (ESD) would begin to collect premiums Jan. 1, 2019, and begin paying benefits Jan. 1, 2020; and,
- Premiums are calculated at the Social Security wage base, currently at \$127,200 per year.

Types of Leave and Eligible Family Members

- Same medical conditions and military exigency needs as currently allowed under FMLA; and,
- For family leave, the eligible family members are the same as those allowed for sick leave under Initiative 1433, passed by voters in November 2016.

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Number of Weeks of Benefits Per Year

- Disability: Up to 12 weeks, or up to 14 weeks for a pregnant individual with pregnancy complications;
- Family: Up to 12 weeks; and,
- Annual cap: Up to 16 weeks, or up to 18 weeks for a pregnant individual with pregnancy complications.

Amount of Wage Replacement

- Employees receive 90 percent of up to half the of the state's Average Weekly Wage and 50 percent of earnings above;
- Wages are capped at \$1,000 per week, adjusted annually for inflation; and,
- Benefits are calculated on the two highest earning quarters in the last four completed quarters.

Job Retention and Protection Benefit

- There is no additional requirement beyond the federal FMLA, namely the job is protected if the employee works for an employer with 50 or more employees, and has worked with that employer for 12 months and 1,250 hours prior to the qualifying event; and,
- Key employees are exempted from job protection requirement.

Business Assistance Provisions

- There will be no Unemployment Insurance (UI) charge for an employer that hires a temporary worker to cover a worker on leave, and then lays off the temp worker when their employee returns from leave;
- Businesses with less than 150 employees, and have opted in to the program, are eligible for a \$3,000 payment to cover the cost of a temporary employee, capped at \$30,000 per year; and,
- Businesses with less than 150 employees, and have opted in to the program, can choose to retrain an employee internally and will be eligible to receive reimbursement for actual costs up to \$1,000 (costs can include training, overtime, etc.).

Employee Notice of Leave to Employer

- Workers are required to provide 30 days notice, or as soon as is practicable.

Local Ordinances

- No local government programs;
- No employer top-up; and,
- No local government enforcement of the state program.

Other Provisions

- The state ESD will administer the program;
- Entities subject to a collective bargaining agreement (CBA) would not need to comply until the CBA is reopened, renegotiated, or expires;
- Workers must take leave in at least eight-hour increments; they cannot take a couple of hours of paid family or disability leave at a time;
- No eligibility for workers' compensation or UI while on paid family or disability leave. FMLA leave under federal law must be taken concurrently with paid family or disability leave; and,
- Waiver program for employers to offer their own paid family or disability programs that meet specific conditions.

Appeals and Enforcement

- Appeal process for employees and employers modeled on ESD's current appeal process for UI, namely an initial claim at ESD, appeal to OAH, and appeal to trial courts;
- Employers have the right to a cure, similar to pregnancy accommodations;
- Creates a PFMLI Ombuds in ESD available to all employers and employees in the state; and,
- There is a requirement to provide employee with information on their rights under the program and ESD appeals, to be provided at the time of hire, and then available to employees in the employee handbook, or in employment poster thereafter.