

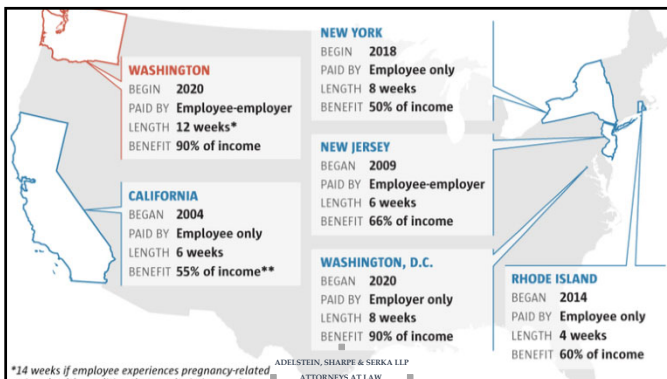
WASHINGTON'S PAID FAMILY / MEDICAL LEAVE



NEWSFLASH!

- The Washington Department of Labor and Industries (LNI) is in the process of changing several components of the State's white collar overtime exemptions (administrative, professional and executive).
- Draft proposed rules released on October 5, 2018.
 - Key change is to the salary basis test (currently \$455/week)
 - Proposal: increase salary basis test to 1.5-3 X WA minimum wage. The minimum wage in Washington in 2020 will be \$13.50/hour, meaning salary basis could be as high as \$84,240 per year.
- LNI will begin public comment and feedback period shortly.
- We will continue to monitor what could be a monumental change.

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Washington Family & Medical Leave Program Basics

- Codified in RCW 50A.04.
- Universal paid leave program.
- Employment Security Department implements and administers.
- ESD rulemaking is ongoing.
- Collect premiums starting January 1, 2019 (First Premiums due April 30).
- Workers can apply/receive benefits beginning January 1, 2020.

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WHAT EMPLOYERS NEED TO KNOW ABOUT WAPFML:

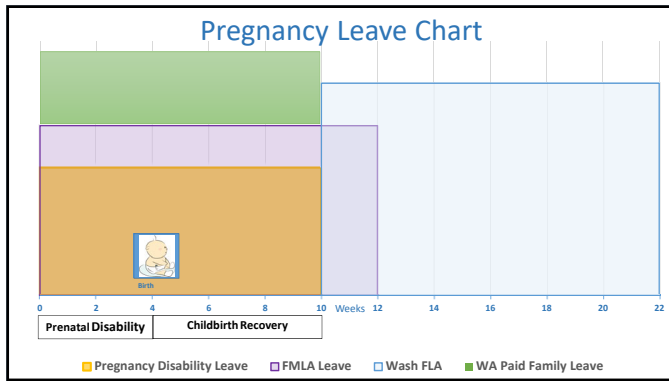
- Paid leave for up to 12 weeks (18 weeks in some scenarios) for:
 - Bonding after the birth or placement of a child who is under the age of 18.
 - Care of family member with serious health condition
 - Employee's own serious health condition
 - Military connected events, (e.g., leave for short-notice deployments, urgent childcare related to military service and post-deployment activities)
- **ESD makes the determination of whether event is qualifying—not the employer!**
- **Runs concurrently with FMLA. See RCW 50A.04.250 (most of the time).** Washington law applies more broadly to grandparents and grandchildren than FMLA.

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Paid Family & Medical Leave Interplay with other Leave Laws

- A qualifying event under WAPFML could trigger SIX other laws:
 - Federal Family Medical Leave Act
 - Washington Family Leave Act
 - Washington Paid Sick Leave
 - Washington Pregnancy Disability Leave (WLAD)
 - Washington Family Care Act
 - Americans with Disabilities Act
- Also consider: Employer's other leave policies, including vacation/PTO and short and long term disability policies.

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TRICKY LEAVE SITUATIONS PART ONE

- Hypothetical:** Employee suffers from serious health condition and takes FMLA leave but never applies for Paid Family & Medical Leave benefits. Employee exhausts her FMLA leave 12 weeks later. Once exhausted, employee applies for Paid Family & Medical Leave and take an additional 12-18 weeks of leave. Is this permissible?

Answer: Issue is being considered as part of the rulemaking process. This is likely permissible, although the employer may require that the employee adhere to its notice requirements.

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TRICKY LEAVE SITUATION PART TWO

- Hypothetical:** Employee suffers from serious health condition. Employee applies for, and receives, Paid Family & Medical benefits. Employee also uses accrued paid sick leave during absence. Is this permissible?

Answer: It is expected that an employee will not be allowed to collect benefits from the Paid Family Leave & Paid Medical Leave program while at the same time receiving paid time off from the employer. It is also expected that the employer may allow the employee the option to choose between collecting WAPFML benefits or paid time off from the employer, and that the employer will not be allowed to expect employees use their PTO first before WAPFML.

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TRICKY LEAVE SITUATION PART THREE

- **Hypothetical:** An employee suffers a workplace injury and misses work. Can the employee receive either (1) time loss compensation or (2) be kept on salary and also use WAPFML to compensate him for his time away from work?

Answer: No. An employee must choose between workers' compensation benefits or WAPFML. See RCW 50A.04.240. In any week in which an employee is eligible to receive either unemployment or workers' compensation benefits, the employee is disqualified from receiving WAPFML benefits.

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NUTS AND BOLTS: EMPLOYEE ELIGIBILITY

- **Employer Eligibility:** All employers with 1 employee in Washington.
 - Self employed individuals may opt in
 - Federal employees are exempt but federally recognized tribes may opt in
 - Temporary WA employees are exempt
- **Employee Eligibility:** (Almost) **All** Employees!
 - Eligible if employed by any WA employer for at least 820 hours during
 - first 4 of last 5 calendar quarters OR
 - last 4 completed calendar quarters
 - **Only 15.77 hours/week average to qualify!**
 - **Only 20.5 weeks at full time!**
 - **Contractors and Temps**

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Nuts and Bolts: Premium Payments

- **Initial premium: 0.4% of wages.* Employers pay 37%; Employees pay 63%**

Employers < 50 Employees exempt!
BUT must still track information and submit employee share.
May choose to pay premium in exchange for eligibility for \$3k state grant to defer cost of replacing employees on leave.
Employees pay 100% of Family Leave Premium and 45% of Medical Premium.

***Will adjust after 2022 based on \$\$ paid**

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NUTS AND BOLTS: CALCULATING EMPLOYEE BENEFIT

Employees entitled to benefit of up to \$1,000/week paid by state.

Amount depends on 1/2 WA Avg. Wage ("1/2 WAW").

- Employees earning < 1/2 WAW get 90% of pay.
- Employees earning > 1/2 WAW get 90% of:
 - 1/2 WAW + 0.80 x ([Employee Wage] - 1/2 WAW)
- Employee must make around \$86,000 to receive max. \$1k benefit. The minimum benefit is \$100 per week.

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WAPFML

❖ An employee earned \$2,000 in gross wages in a single pay period

- .4% X \$2,000 = \$8 (total premium)

❖ Family Leave = 1/3 total premium (all EE paid)

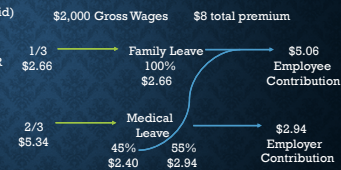
- 1/3 X 8 = \$2.66

❖ Medical Leave = 2/3 total premium (EE + ER paid)

- 2/3 X 8 = \$5.34
- ER portion = 55% X \$5.34 = \$2.94
- EE portion = 45% X \$5.34 = \$2.40

❖ Add employee portions (family = \$2.66 + medical \$2.40)

- This would equate to a \$5.06 employee contribution
- This would equate to a \$2.94 employer contribution



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NUTS AND BOLTS: HOW TO CALCULATE EMPLOYEES

- On September 30th of each year, the average number of employees reported by an employer over the last 4 completed calendar quarters will be used to determine the size of the employer for the next calendar year.
- Who is an "employee?" Not completely sure yet.
- We do know that it is a headcount, rather than a count of FTE employees.

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NUTS AND BOLTS: OUT OF STATE ISSUES:

- Out-of-state employers who have employees based in Washington are required to collect premiums and remit on behalf of their Washington employees.
- If an employee primarily works in Washington, and most of their work is performed in Washington, they are covered by WAPFML. This continues to be true even if they sometimes travel for work out of state.
- An employee is not covered by Paid Family and Medical Leave, and their employer is not required to withhold premiums, if they are working in Washington for a short period of time.

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EMPLOYER RESPONSIBILITIES AND NON-COMPLIANCE

- 1. Report employee wages, hours worked, and other information for all employees. [Penalties for failure to properly make required reports. Penalties for failure to keep required records.] \$75-\$250 penalties. Steep penalties for willful failure to remit.
- 2. Collect and remit premiums to E.S.D. on quarterly basis.
- 3. Post required posters and notices in the workplace.
- 4. Do not interfere with employees who exercise paid leave rights or retaliate against them [Double damages available to employees in this circumstance.]

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PAID FAMILY LEAVE: JOB PROTECTED . . . SORT OF

- Job Protected Leave if: (1) Works for an employer with 50 + employees; (2) has been employed by the current employer for 12 months or more; and (3) has worked for the current employer for at least 1250 hours during the 12 months immediately preceding the start of leave.
- But: An employer may deny restoration to any salaried employee who is among the highest paid 10% of the employees employed by the employer within 75 miles.

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VOLUNTARY PLANS

- Available to employers who would like to offer their own plan.
- A voluntary plan may cover medical leave and/or family leave.
- Voluntary plans must be pre-approved by WA for first three years.
- The plan must meet or exceed the benefits provided by WAPFML.
 - Offer the same or greater duration as WAPFML
 - Offer equal or greater wage replacement benefits
 - Withhold the same or less from an employee's pay
 - Cover the same qualifying events as WAPFML

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ADVANTAGES OF A VOLUNTARY PLAN

- May incentivize an early return to work
 - Example: Employer can pay out the compensation available for a 12 week parental leave in 6 weeks.
 - Limitation: An employer must offer at least half the entitled amount of time for leave.
- Employers can choose to have the plan administered by a third party.

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NEXT STEPS: ESD RULEMAKING AND PUBLIC ENGAGEMENT!

- Employment Security is in the midst of its rulemaking process.
- ESD has divided the rulemaking process into six phases, each phase deals with a different topic.
- Only Phase One has been completed. Rules for (1) Assessing and collecting premiums, collective bargaining agreements, and voluntary plans are finalized. See WAC 192-510, 520, and 530.

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HOW EMPLOYERS CAN PREPARE FOR PAID FAMILY LEAVE

- Prepare to withhold premiums and remit to state.
- Think through how paid leave will impact the workplace.
- Establish tracking mechanisms
- Review policies to make sure that you are not penalizing employees for using paid leave.
- Train supervisors on correctly handling situations.
- Review PTO and payroll policies to ensure compliance.

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PREPARING FOR NEW PAID LEAVE PROGRAM

- Review independent contractor classifications carefully!
- New workplace notice postings! (when available)
- Obtain notices for employees (when available).
- We continue to track the rulemaking process as 2019/2020 approaches.
- Revise policies accordingly
- Keep informed of changes

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