

Washington Paid Family and Medical Leave (WA PFML) Act frequently asked questions

Updated January 2021

Since January 1, 2020, employees in Washington state have been eligible for paid leave benefits under the Washington Paid Family and Medical Leave (WA PFML) Act. Premium collection, which began January 1, 2019, is funded by both employee and employer contributions. The Washington Employment Security Department (ESD) is the agency responsible for administering the PFML law.

This document is not intended to be and should not be construed as legal advice. Employers are encouraged to consult employment law counsel for legal advice.

Additional resources

Visit the state's website at www.paidleave.wa.gov

Visit Sun Life's website at www.sunlife.com/wapfml

Answers to frequently asked questions, by topic

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Section 1: General overview

1.	What are the covered leave reasons under the WA PFML?	<p>Medical leave is any leave from work made necessary by the employee’s own serious health condition.</p> <p>Family leave is available:</p> <ul style="list-style-type: none"> • to participate in caring for a family member with a serious health condition; • to bond with employee’s child during the first 12 months after the birth or to bond with the child within 12 months of the placement of child under 18 years of age; or • for a qualifying exigency when the employee’s family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces
2.	Who are covered family members?	<p>Family members include:</p> <ul style="list-style-type: none"> • employee’s spouse or state registered domestic partner • child • parent of the employee • grandchild • grandparent • sibling • a person who stood <i>in loco parentis</i> to the employee when the employee was a minor child • a person who is a de facto parent • a child to whom the employee stands <i>in loco parentis</i> or a person to whom the employee stood <i>in loco parentis</i> when the person was a minor child.
3.	What is a serious health condition under the PFML law?	<p>The PFML law defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility or (ii) continuing treatment by a healthcare provider.</p> <p>The definition of “continuing treatment by a healthcare provider” is consistent with the standards required under the FMLA and includes period of incapacity due to pregnancy and prenatal care, chronic health conditions, and permanent and long-term conditions.</p>

Section 2: Benefit durations and amounts

4.	What are the leave allotments under the PFML?	<p>Medical leave is available for the employee’s own serious health condition for up to 12 weeks per claim year. An employee who experiences a serious health condition with a pregnancy that results in incapacity is eligible for up to two additional weeks of medical leave.</p>
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		<p>Family leave is available for bonding, care of a family member, or qualifying military exigency for up to 12 weeks per claim year.</p> <p>A combined maximum of 16 weeks of leave are available per claim year, or 18 weeks if the employee experiences a serious health condition during pregnancy that results in incapacity.</p>
5.	What is the claim year method applied to the maximum durational entitlements?	The claim leave year is measured forward by 52 consecutive weeks from the Sunday before the employee’s application date. That excludes claims for bonding, when time is measured forward by 52 consecutive weeks from the Sunday preceding the date of birth or placement.
6.	Is there a waiting period?	<p>Yes, there is a waiting period of the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking PFML. An employee satisfies the waiting period if the employee takes at least 8 consecutive hours of leave during the first week of the employee’s PFML. Under the WA PFML, 8 consecutive hours is the minimum claim duration.</p> <p>An employee is not entitled to paid benefits during the waiting period.</p> <p>Employees must meet only one waiting period per claim year.</p> <p>The waiting period does not apply to:</p> <ul style="list-style-type: none"> • Family leave taken for bonding after a child’s birth or placement or • Family leave taken for reasons related to a qualified military exigency. <p>An employee’s use of paid time off for all or any part of the waiting period will not affect the satisfaction of the waiting period.</p>
7.	What does it mean that the minimum claim duration is 8 consecutive hours?	<p>In the state program, employees must file an initial application for benefits as well as a weekly claim for benefits. The ESD has established regulations that the minimum claim duration that must be satisfied each week in order for an employee to be eligible for payment is 8 consecutive hours.</p> <p>If an employee satisfies the 8 consecutive hour minimum weekly claim duration at any point in the week, all other PFML time reported for that week will become payable (subject the annual waiting period discussed above).</p>
8.	What is the amount of PFML benefit?	<ul style="list-style-type: none"> • The benefits are paid at 90% of the employee’s wages, up to 50% of the state’s average weekly wage (SAWW). • Any portion of the employee’s wages that exceed 50% of the SAWW will be paid at 50%. • The minimum benefit will be \$100 or the employee’s average weekly wage if it’s less than \$100.
9.	Is there a maximum PFML benefit?	<ul style="list-style-type: none"> • The maximum weekly benefit amount is \$1,206 for leaves in 2021. • The maximum weekly benefit will be adjusted to each September 1 and take effect the January 1 thereafter.

10.	Is intermittent and/or reduced schedule leave permitted?	Yes, intermittent and/or reduced schedule leave may be taken.
11.	What wages are included when calculating benefit amounts?	<p>The WA PFML provides that wages include “remuneration” paid by an employer to an employee, and defines “remuneration” as all compensation paid for personal services including commission and bonuses and the cash value of all compensation paid in any medium other than cash.</p> <p>The WA PFML further provides that previously accrued compensation, other than severance pay or payments received under plant closure agreements, when assigned to a specific period of time by a collective bargaining agreement, individual employment contract, customary trade practice or request of the individual compensated is considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation makes the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.</p> <p>Remuneration also includes settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date.</p> <p>Remuneration does not include:</p> <ul style="list-style-type: none"> • the payment of tips; supplemental benefit payments made by an employer to an employee in addition to any paid family or medical leave benefits received by the employee; or • payments to members of the Armed Forces of the U.S. for the performance of duty for periods not exceeding 72 hours at a time.
12.	What is the amount of the paid benefit when an employee takes intermittent or reduced schedule leave?	<p>For an employee who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount calculated is prorated in direct proportion to the intermittent or reduced leave schedule.</p> <p>When an employee opens a leave claim, any successive periods of leave caused by the same or related injury or sickness are deemed a single period of family and medical leave if separated by less than four months. Therefore, the employee need not file a new claim with each intermittent occurrence.</p>
13.	What is the minimum increment of intermittent leave that is allowed?	<p>The law provides that the minimum claim duration each week is eight consecutive hours of leave. However, once an employee meets the eight consecutive hour requirement in a claim week all intermittent leave in minimum increments that is reported for the same week will also be payable intermittent leave.</p> <p>Time usage is measured both forwards and backwards. For example, if an employee misses one hour of work on Tuesday and one hour on Wednesday for PFML reasons and then proceeds to miss eight consecutive hours on Friday, the hourly absences on Tuesday and Wednesday will be payable for that claim week. See WAC 192-620-005.</p>

	Furthermore, the measurement of the “claim week” does not align with the measurement of the claim year which, in Washington, is measured from the Sunday before the day the claim is initially filed and not the Sunday before the first day of leave.
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Section 3: Eligible employees

14.	Which employees are considered eligible for leave under the WA PFML law?	<p>A covered employee is eligible when he or she works 820 hours in WA during the qualifying period. This is 820 hours for any employer in Washington. Employees are not required to work 820 hours for their current employer to be eligible.</p> <p>Once an employee has met the 820-hour threshold, they are eligible to apply for leave even if they are no longer employed.</p> <p>The “qualifying period” is the first four of the last five calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.</p> <p>Calendar quarter means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.</p> <p>Eligibility is transferrable if an employee switches employers.</p>
15.	What about employees covered under Collective Bargaining Agreements (CBA)?	<p>PFML rights and responsibilities do not apply to parties covered by CBAs in effect before October 19, 2017, unless and until the agreements expire, are reopened or are renegotiated.</p> <p>Employers are obligated to inform ESD immediately upon the reopening, renegotiation or expiration of a CBA that was in effect prior to October 19, 2017.</p> <p>The ESD has indicated that for the purposes of the WA PFML, only CBAs that have been renegotiated in their entirety meet the definition of reopened, renegotiated or expired. The ESD provided the following additional guidance:</p> <ul style="list-style-type: none"> • A memorandum of understanding (MOU) covering a narrow or specific section of a CBA does not constitute a reopening or renegotiation. • The ESD has advised that, for example, MOUs to accommodate the new WA paid sick leave law are not considered a reopening or renegotiation. • This includes MOUs to expand the collectively bargained definition of family, accrual rates and reasons for usage under the new paid sick leave law. • Negotiations of future contracts do not constitute a reopening or renegotiation either. <p>In addition, an employer must file quarterly reports once a CBA expires or is reopened or renegotiated.</p>

		<p>Under PFML, an employee must have worked at least 820 hours during the qualifying period to be eligible for benefits. If the employee’s qualifying period includes any quarter prior to a CBA being reopened, renegotiated or expiring, the ESD will request the employee’s qualifying period wages and hours from the employer. The employer must provide the wages and hours to the ESD within 10 calendar days.</p> <p>Employers who are a party to multiple CBAs among different bargaining units are subject to PFML, for units whose CBA has expired, been reopened or renegotiated, on or after October 19, 2017.</p> <p>Parties to a CBA that has not been reopened or renegotiated by the parties or expired may elect to be subject to the WA PFML prior to the expiration, reopening or renegotiation of the CBA by submitting a MOU, letter of agreement or a similar document signed by all parties to the ESD.</p>
16.	<p>Are there grounds that disqualify an employee from receiving WA PFML benefits?</p>	<p>Yes. An employee is not entitled to WA PFML benefits:</p> <ol style="list-style-type: none"> a. for any absence occasioned by the willful intention of the employee to bring about injury to or the sickness of the employee or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act; b. for any family or medical leave commencing before the employee becomes qualified for benefits under this chapter; c. for an employee who is on suspension from his or her employment; or d. for any day in which a family or medical leave recipient works at least part of that day for remuneration or profit during the same or substantially similar working hours as those for the employer from which family or medical leave benefits are claimed, except that occasional scheduling adjustments with respect to secondary employments shall not prevent receipt of family or medical leave benefits. e. when the employee has knowingly and willfully made a false statement or representation involving a material fact or knowingly and willfully failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this chapter. An employee is disqualified for benefits due to false statement or representation described here for the: <ol style="list-style-type: none"> i. first time is disqualified for an additional 26 weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of 15 percent of the amount of benefits overpaid or deemed overpaid; ii. second time is also disqualified for an additional 52 weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of 25 percent of the amount of benefits overpaid or deemed overpaid;

		<p>iii. third time and any time thereafter is also disqualified for an additional 104 weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of 50 percent of the amount of benefits overpaid or deemed overpaid.</p>
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Section 4: Covered employers

17.	Which employers are required to comply with the PFML law?	<p>Public and private employers employing one or more individual in the state are subject to this law.</p> <p>Covered employers include:</p> <ul style="list-style-type: none"> a) any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter; b) the state, state institutions and state agencies; c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and d) A franchisee. <p>Federal employers, federally recognized tribes and self-employed persons are exempt from the program, but federally recognized tribes and self-employed persons can elect in to the program.</p>
18.	What size employers are required to comply to with the PFML law?	<p>Employers are required to comply with the WA PFML law if one or more of their employees work in WA.</p> <p>As discussed more fully below, employers with fewer than 50 employees in WA are not legally required to make the employer portion of the premium contributions. However, if an employer with fewer than 50 employees chooses not contribute the employer portion of the premium, they will lose the ability to apply for grants (discussed below) created by the state to supplement the labor replacement costs of the program.</p> <p>Employers with fewer than 50 employees in WA must still report employee wages, hours and more.</p> <p>Regardless of size, all employers are responsible for collecting and remitting the employee portion of the PFML premium and must permit eligible employees to take PFML leave commencing January 1, 2020. Employers may – but are not required to – pay the employee’s share of the premium.</p>
19.	Are self-employed individuals eligible to participate in the PFML Program?	<p>Self-employed individuals can elect coverage by opting in to the program by submitting a notice of election to the ESD. Elective coverage begins on the first day of the quarter immediately following the notice of election.</p>

		<p>Self-employed employers include sole proprietors, independent contractors, partners and joint ventures.</p> <p>When electing to use the state plan, self-employed persons must participate for an initial period of three years, and one-year periods thereafter.</p> <p>The self-employed individual pays only the employee share of the premium.</p> <p>A self-employed individual can file a notice of withdrawal within 30 calendar days of the end of each period of coverage by submitting such notice to the ESD.</p>
20.	When are self-employed individuals eligible benefit eligible?	<p>The self-employed person is eligible for PFML benefits after working 820 hours in the state during the qualifying period following the date of filing the notice.</p> <p>The ESD will use the self-employed person’s reported income and divide it by the state’s minimum wage to presume the number of hours worked. The self-employed person may overcome the presumption of hours by providing sufficient documentation to the ESD including, but not limited to, personal logs or contracts.</p> <p>The ESD may require copies of tax returns, bank records or any other documentation deemed necessary by the ESD to verify or determine the self-employed person’s hours and wages.</p>

Section 5: Premiums, program funding, employer reporting, penalties , and audit

21.	How are PFML benefits funded?	<p>Premiums are 0.4% of gross wages paid. Employers may withhold approximately 63% of the premium from employee wages (or employers may elect to pay that portion themselves). Therefore, the maximum an employer may withhold from employee contributions is 0.253% of wages.</p> <p>An employer that elects to pay all or a portion of its employees’ premiums must give written notice at least one pay period before change in its elected payment.</p> <p>Premium collection began January 1, 2019, and leave benefits become available beginning January 1, 2020.</p> <p>Each year, the ESD will post the premium rates for family and medical leave for the following calendar year by November 30.</p>
22.	When must premium payments be made?	<p>Premiums must be paid quarterly in arrears. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the ESD by the last day of the month following the end of the calendar quarter for which premiums are being paid.</p>

		<p>Premium payments are due within 10 calendar days when a business is dissolved or the account is closed by the ESD. Late premium payments are considered delinquent and subject to interest.</p>
23.	<p>Can an employer take out “retroactive” deductions if it missed the deadline for starting deductions?</p>	<p>No. An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.</p> <p>If an employer fails to deduct the maximum allowable employee share of the premium from wages paid per pay period, the employer is considered to have elected to pay that portion of the employee share for that pay period. The employer cannot deduct this amount from a future paycheck of the employee.</p>
24.	<p>How are the number of employees determined for premium purposes?</p>	<p>An employee is an individual in the employment of an employer. Employer includes any organization, including a partnership, association, trust, estate, company, LLC or corporation; the state, state institutions and agencies; or any unit of local government.</p> <p>The ESD determines employer size for premium liability. The ESD will calculate an employer’s size on an annual basis on September 30 of each year. The calculation is based on the employer’s average employee headcount over the previous four quarters as reflected in the reports required to be submitted to the ESD. It is not calculated by FTEs (Full Time Employee positions).</p> <p>When there is a determination that the employer has fewer than 50 employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year.</p> <p>Example: On September 30, 2020, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2019, through June 30, 2020. The employer is liable for the employer portion of premiums for 2021. On September 30, 2021, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2020, through June 30, 2021. The employer is no longer liable for the employer share of premiums for 2022.</p>
25.	<p>How will the ESD assess the size of employers who are new to the state?</p>	<p>An employer that has not been in business in Washington long enough to report four calendar quarters by September 30 will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists.</p> <p>Premium assessment based on this determination will begin on this reporting date.</p> <p>This size determination remains in effect until the following September 30.</p>

26.	<p>Is an employee counted for premium assessment when not all of their work is done within the state of Washington?</p>	<p>Employees who are “localized” in Washington are included in premium assessments and reporting.</p> <p>An employee's work is considered localized in Washington when:</p> <ul style="list-style-type: none"> a) all of the employee's work is performed entirely within Washington; or b) most of the employee's services are performed within Washington, but some of the work which is temporary or transitory in nature, or consists of isolated transactions is performed outside of Washington. <p>Services that are not localized in WA will be counted toward WA service when they are not localized in any state, but some of the services are performed in Washington, and:</p> <ul style="list-style-type: none"> a) The base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such services is directed or controlled is in Washington; or b) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.
27.	<p>Can employees waive their right to take leave under the WA PFML so that premium contributions do not have to be paid?</p>	<p>Conditional waivers are available for employees who are physically located primarily outside of Washington but also work in WA on a limited or temporary work schedule and are not expected to be employed in the state for 820 hours or more in a qualifying period.</p> <p>To be effective, the ESD must approve an application for a conditional waiver that has been signed by both the employee and the employer.</p> <p>If the employee exceeds the 820 hours in a qualifying period, the conditional waver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the qualifying period in which the employee exceeded the 820 hours had the waiver not been granted.</p> <p>Upon payment of the missed premiums, the employee will be credited for the hours worked and be eligible for WA PFML benefits as if the premiums had originally been paid.</p> <p>Employers are required to submit quarterly reports including data on employees with approved conditional waivers in order to verify that those employees still qualify for the conditional premium waiver.</p>
28.	<p>What are employer reporting obligations under the WA PFML?</p>	<p>Employers must file quarterly reports with the ESD, as well as make premium payments, quarterly in arrears, with due dates of April 30, July 31, October 31, and January 31, respectively. If a reporting date falls on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day.</p>

The reporting fields consist of the following:

- Employer Unified Business Identifier (UBI) number. (The UBI number is assigned by the ESD).
- Business name
- Total premiums collected (if any) from employees
- Name of the report preparer.
- The following information s to each employee:
 - ✓ SSN or TIN
 - ✓ Full Name
 - ✓ Wages paid in the reporting quarter and associated hours

Each calendar quarter employers must report the number of hours worked by each employee. More detail below regarding what employers must include the hours in the report:

- i. Hourly. For hourly employees the total number of hours worked by each employee
- ii. Salaried. For salaried employees, report 40 hours for each week in which a salaried employee worked
- iii. Vacation, pay, sick leave pay, paid time off. Report the number of hours an employee is on paid leave (vacation, sick leave, and paid time off) (do not report hours for a “cash out” of leave)
- iv. Overtime. Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.
- v. Commissions or piecework employees. Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee at forty hours worked for each week in which any of their duties were performed.
- vi. Wages in lieu of notice. Report the actual number of hours for which an employee was paid.
- vii. Faculty employees. To be considered full time, faculty members of community and technical colleges must meet the definition of "full time" as defined in RCW [28B.50.489](#).
 - (i) For full-time faculty members, report thirty-five hours per week.
 - (ii) For part-time faculty members, multiply thirty-five hours by the percentage that is equal to the percentage of hours worked in relation to a full-time faculty member consistent with RCW [28B.50.4891](#).
- viii. Severance Pay. Do not report hours for severance pay.
- ix. Payment in kind. Report the actual hours worked for performing services which are compensated only by payment in kind.
- x. Fractions of hours. If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.
- xi. Practice, preparation, and rehearsal time. If an employee who is part of a performing group is paid for a performance but is also required by the employer to attend practice, preparation, and rehearsal on an

		<p>organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.</p> <p>xii. On-call and standby hours. Report the number of actual hours for which an employee receives wages for being on call or on standby with the employer. Do not report hours for which an employee is scheduled to check in before work, and if not required to work, has no further obligations. For the purpose of this section, "on-call" and "standby" hours are defined as paid hours when employees must comply with employer requirements, such as maintaining physical or mental status, remaining in a specified location, or being required to report to work within a specific time frame.</p>
29.	What happens if an employer fails to submit reports?	<p>An employer that willfully fails to file complete and timely reports are subject to penalties. The ESD will send a warning letter for an employer's first incomplete or untimely report. Second and subsequent incomplete and untimely reports within five years of the last occurrence will be assessed a penalty. The penalty schedule is as follows:</p> <ul style="list-style-type: none"> i. \$75.00 for the second occurrence ii. \$150.00 for the third occurrence iii. \$250.00 for the fourth and subsequent occurrences <p>After five years without a warning letter or occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.</p>
30.	What wages are reportable to the ESD for premium assessment purposes?	<p>Examples of wages reportable to the ESD for premium assessment purposes include, but are not limited to:</p> <ul style="list-style-type: none"> • Salary or hourly wages • Cash value of goods or services given in place of money • Commission or piecework • Bonuses • Cash value of gifts or prizes • Cash value of meals and lodging when given as compensation • Holiday pay • Paid time off, including vacation and sick leave, as well as associated cash outs • Bereavement leave • Separation pay including severance pay, transition pay, and wages in lieu of notice • Value of stocks at the time of transfer to the employee if given as part of a compensation package • Compensation for use of specialist equipment, performance of special duties, or working particular shifts

		<ul style="list-style-type: none"> • Stipends/per diems unless provided to cover a past or future cost incurred by the employee as result of the performance of the employee’s expected job functions. <p>The following are examples of what the ESD will not consider wages included for premium purposes:</p> <ul style="list-style-type: none"> • A supplemental payment from an employer benefit that is not part of the employee’s standard compensation. The ESD provides an example of a top up to an employee’s short-term disability benefit. • Any payment made to an employee to cover a past or future cost incurred by the employee related to the performance of the employee’s expected job functions, including meals and travel. • The amount of any retirement, sickness or accident disability (short-term or long-term disability benefit), or medical expense payment or life insurance plan.
31.	How should employers report hours worked?	<p>Each calendar quarter, employers must report the number of hours worked by each employee to the ESD. Employers must include the following hours in the report.</p> <ul style="list-style-type: none"> • Hourly employees. Report the total number of hours worked by each employee. • Employees on salary. Report 40 hours for each week in which a salaried employee worked. • Vacation pay, sick leave pay, paid time off. Report the number of hours an employee is on paid leave. • Overtime. Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid. • Commissioned or piecework employees. Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee at 40 hours worked for each week in which any of their duties were performed. • Wages in lieu of notice. Report the actual number of hours for which an employee was paid. • Faculty employees. <ul style="list-style-type: none"> ✓ To be considered full time, faculty members of community and technical colleges must meet the definition of "full time" as defined in RCW 28B.50.489. ✓ For full-time faculty members, report 35 hours per week. ✓ For part-time faculty members, multiply 35 hours by the percentage that is equal to the percentage of hours worked in relation to a full-time faculty member consistent with RCW 28B.50.4891.

		<ul style="list-style-type: none"> • Severance pay. Do not report hours for severance pay. • Payment in kind. Report the actual hours worked for performing services that are compensated only by payment in kind. • Fractions of hours. If the employee’s total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number. • Practice, preparation, and rehearsal time. If an employee who is part of a performing group is paid for a performance but is also required by the employer to attend practice, preparation and rehearsal on an organized group basis, report the hours spent in the required practice, preparation and rehearsal as well as the performance. • On-call and standby hours. Report the number of actual hours for which an employee receives wages for being on call or on standby with the employer. Do not report hours for which an employee is scheduled to check in before work, and if not required to work, has no further obligations. The ESD has indicated that "on-call" and "standby" hours are defined as paid hours when employees must comply with employer requirements, such as maintaining physical or mental status, remaining in a specified location, or being required to report to work within a specific time frame.
32.	<p>How do employers file the reports?</p>	<p>Employers create Paid Leave accounts with the ESD. To create an account, employers will need their UBI number, business name and contact information. Once an account is established, the UBI number will become the Customer ID.</p> <p>A variety of file formats can be used to file the information. Information about filing/reporting can be found here: https://www.paidleave.wa.gov/reporting</p>
33.	<p>How are premium payments applied?</p>	<p>A payment received with a premium assessment will be applied to the quarter for which the premium assessment is filed.</p> <p>A payment exceeding the legal fees, penalties, interest and premiums due for that quarter will be applied to any other debt in the priority outlined below.</p> <p>Payments received will be applied in the following order of priority:</p> <ol style="list-style-type: none"> Most recently completed quarter's premium balance; any previous quarter premium balance starting with the oldest quarter; then beginning with the oldest quarter in which a balance is owed: <ol style="list-style-type: none"> penalties; fees; and interest charges.

		If no debt exists, a refund will be issued for any premium overpayments of fifty dollars or more. Premium overpayments of less than fifty dollars will be credited to future premium assessments.
34.	Is an employer permitted to charge one class of employee up to the maximum allowed under the law for WA PFML contributions and pay all contributions for another class of employee?	Yes, an employer may choose to pay the premium for some employees and collect it from others.
35.	What happens if an employer willfully fails to remit requirement premium payments?	<p>An employer that willfully fails to remit payment for premiums in full when due is subject to penalties.</p> <p>The total amount of the penalty will be equal to the entire balance of premiums not remitted and any interest accrued on those delinquent premiums.</p> <p>Example: If an employer owes \$300 in premium payments and \$20 in interest, the penalty for willfully failing to remit payment will equal \$320, for a sum total due and owing of \$640.</p>
36.	How is interest calculated on delinquent premium payments?	<p>When an employer fails to remit payment by the due date, the remaining unpaid balance shall accrue interest at a rate of one percent, compounded monthly, until payment is received in full.</p> <p>The ESD will issue a notice to employers whose payments are delinquent. The notice will include the total amount due for all applicable premiums, penalties, and interest.</p>
37.	Can interest be waived?	An employer may submit a request to waiver interest to the ESD that includes all relevant facts, including all available proof, as to why it is requesting a waiver. At its discretion, the ESD may waive interest if it finds that the interest was caused by the ESD's own error or the ESD's inability to decide the issue.

38.	What are the ESD’s rights to audit and consequences of employer failing to respond appropriately to audit?	<p>The ESD may inspect and audit employer files and records as needed to ensure compliance. Audits may take place at the discretion of the ESD.</p> <p>Employers must provide all requested information to the ESD within ten business days or a time frame agreed to by the ESD.</p> <p>If the ESD discovers violations for the time frame being audited, it may expand the audit to include prior and subsequent quarters, up to the most recently completed calendar quarter.</p> <p>If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the ESD may determine payroll and wage information for the purposes of premium assessment based on information otherwise available to them. This may include information from the same employer, similar employers, labor market information, information provided to other state or local agencies, or the best information otherwise available to the ESD.</p>
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Section 6: Job restoration, health insurance continuation, and nonretaliation

39.	What are the job protections for employees under the WA PFML law?	<p>An employee is eligible to be restored to the employee’s previous or an equivalent job position with equivalent pay, benefits and other terms and conditions of employment if the employee:</p> <ul style="list-style-type: none"> • works for an employer with 50 or more employees; • has been employed by the current employer for 12 months or more; and • has worked for the current employer for at least 1,250 hours during the 12 months immediately preceding the date on which leave will commence. <p>For purposes of job protection, an employer is considered to employ 50 or more employees if the employer employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.</p> <p>If an employer has opted to provide the WA PFML benefits through a voluntary plan (see discussion below), its employees will become eligible for the job restoration provisions after the employee has worked for the employer for at least nine months and 965 hours during the 12 months immediately preceding the date leave will commence.</p> <p>An employer may deny restoration to the same or an equivalent position to any salaried employee who is among the highest paid 10% of the employees employed by the employer within 75 miles of the facility [“key employees”] at which the employee is employed if:</p> <p>(i) denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;</p>
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		<ul style="list-style-type: none"> (ii) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and (iii) the leave has commenced and the employee elects not to return to employment after receiving the notice.
40.	Can an employer have a fitness for duty requirement?	Yes, for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee’s healthcare provider that the employee is able to resume work.
41.	What are the requirements with regard to continuing health insurance while an employee is on leave covered by the PFML law?	<p>If required by the federal Family and Medical Leave Act (FML), during any period of WA PFML family or medical leave taken by an employee, the employer must maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date the employee commenced family or medical leave until the date the employee returns to employment.</p> <p>If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee’s share of the cost.</p> <p>This requirement does not apply to an employee who is not in employment for an employer at the time of filing an application for benefits.</p>
42.	Is there a prohibition on retaliation against employees who apply for or take WA PFML?	<p>Yes. Under the WA PFML, it is unlawful for any employer to:</p> <ul style="list-style-type: none"> a) interfere with, restrain, or deny the exercise of, or the attempt to exercise, any valid right provided under this chapter; or b) discharge or in any other manner discriminate against any employee for opposing any practice made unlawful by this chapter. <p>It is also unlawful for any person to discharge or in any other manner discriminate against any employee because the employee has:</p> <ul style="list-style-type: none"> a) filed any complaint, or has instituted or caused to be instituted any proceeding, under or related to this chapter; b) given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or c) testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.
43.	What is the process for an employee to file a complaint against an employer for committing unlawful acts?	Any employee may file a complaint with the ESD alleging one or more violations of the WA PFML law. A complaint must be submitted on a form provided by the ESD, or in another format approved by the ESD.

		<p>An employee may alternatively seek a private right of action under chapter to recover damages. A private right of action is only available to an employee who has:</p> <ul style="list-style-type: none"> (a) Not filed a complaint with the ESD; (b) Withdrawn a filed complaint; or (c) Resolved a complaint filed with the ESD. <p>All complaints, whether filed with the ESD or through a private right of action, must be filed within three years of the date the violation is alleged to have occurred.</p> <p>An employee who has filed a complaint with the ESD may withdraw the complaint by providing written notice to the ESD within ten days from the date that ESD had acknowledged receipt of the complaint. A withdrawal of a complaint terminates the ESD's administrative action, including investigation of the complaint.</p> <p>If a resolution is reached between the employee and the employer during the course of the investigation, a statement of resolution must be signed by the employee and the employer and provided to the ESD. Resolution between the employee and the employer terminates the ESD's administrative action related to the complaint.</p>
44.	<p>What happens when the ESD receives a complaint alleging unlawful acts by the employer?</p>	<p>Upon receipt of a complaint, the ESD will investigate.</p> <p>The ESD may request additional information from other parties including, but not limited to, employees, employers, and potential witnesses.</p> <p>The ESD may subpoena potential witnesses, compel their attendance for deposition, and require production for examination of any books, papers, correspondence, memoranda, and any other records deemed necessary as evidence in order to make a determination and assess all damages.</p> <p>If the ESD finds a violation did not occur, the complaint will be closed and a determination will be sent to all interested parties.</p> <p>If the ESD finds one or more violations occurred, it will determine the monetary amount of all damages the employer owes to the employee and a determination will be sent to all interested parties.</p> <p>Any aggrieved party may file an appeal of the ESD's determination.</p> <p>The ESD may consider any information obtained in the investigation as cause to initiate audits for employer files and records.</p>

Section 7: Notice requirements

45.	When must an employee provide notice to the employer for <u>foreseeable</u> leave?	<p>An employee must provide the employer at least 30 days' written notice before WA PFML is to begin if the need for the leave is foreseeable based on an expected birth, placement of a child, or planned medical treatment for a serious health condition.</p> <p>An employee must provide the employer written notice as soon as is practicable when 30 days' notice is not possible, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances or a medical emergency.</p> <p>An employee must provide the employer written notice as soon as is practicable for foreseeable leave due to a qualifying military exigency, regardless of how far in advance such leave is foreseeable.</p> <p>Whether PFML is to be continuous or is to be taken intermittently or on a reduced schedule basis, written notice need only be given one time, but the employee must inform the employer as soon as is practicable if dates of the scheduled leave change, are extended or were initially unknown.</p>
46.	When must an employee provide notice for an <u>unforeseeable</u> leave?	<p>When the need for leave is not foreseeable, an employee must provide written notice to the employer as soon as is practicable under the facts and circumstances of the particular situation.</p> <p>If the employee is unable to provide notice personally, written notice may be given by another responsible party, such as the employee's spouse, neighbor or coworker.</p>
47.	What does "as soon as is practicable" mean?	<p>As soon as is practicable means as soon as it is both possible and practical to provide notice, taking into account all of the facts and circumstances in the individual situation.</p> <p>When an employee becomes aware of a need for WA PFML fewer than 30 days in advance, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.</p>
48.	What information must an employee's notice for leave to an employer include?	<p>An employee must provide written notice to make the employer aware that the employee may need paid family or medical leave. The notice must contain at least the anticipated timing and duration of the leave. Written notice includes, but is not limited to, handwritten or typed notices, and all forms of written electronic communications such as text messages and email.</p>
49.	What happens if an employee fails to provide proper notice?	<p>If the ESD determines that the employee failed to provide proper notice to the employer, the employee's benefits will be denied for a period of time equal to the number of days that the notice was insufficient.</p>
50.	What notice requirements do employers have in terms of	<p>Posting requirements: Each employer must post and keep posted, in conspicuous (common) places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice prepared by the ESD or prepared by the employer and approved by the ESD,</p>

notifying employees of their rights under WA PFML?

that sets forth and summarizes the requirements of the WA PFML law and information pertaining to the filing of a complaint. The notice must contain information on how an employee may file a claim, information about filing a complaint, responsibilities for premium payment, rights information, and the minimum and maximum provisions available for paid leave including the weekly benefit amount and maximum available benefit durations.

ESD's poster is available [here](#).

Employers may be audited to determine if proper notice is posted.

Any employer that willfully violates the poster notice requirement may be subject to a civil penalty of not more than \$100 for each separate offense. The ESD will deposit any penalties collected in accordance with this penalty into the PFML enforcement account. . An employer with a voluntary plan must provide a notice prepared or approved by the ESD regarding the voluntary plan that contains at least the same information as the state notice.

Individualized notice requirements: Employers must provide a written notice of employee rights to any employee when an employer becomes aware that the employee is taking family leave, medical leave, or a combination of both for a duration of more than seven consecutive days of work. The employer must use a notice provided by the ESD. The notice must be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family or medical leave, or within five business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is later.

Notice if employer is no longer paying all or part of the employee portion of premium: The employer must provide written notice, at least one day in advance of any reduction to its elected payment of employee premium.

Notice if denial of employment restoration: An employer enforcing the key employee rule (see Page 15) may deny restoration to employment. The employer must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

- a) a statement that the employer intends to deny restoration when the leave ends;
- b) the reasons behind the decision to deny restoration;
- c) an explanation that health benefits will still be paid for the duration of the leave; and
- d) the date in which eligibility for employer-provided health benefits ends.

Section 8: Claims for WA PFML benefits

<p>51.</p>	<p>How will employees file claims for WA PFML benefits?</p>	<p>When employees apply for benefits, they will be able to set up a customer account with the ESD to apply for and track claim status. They may also contact the WA PFML customer-care center by telephone.</p> <p>Voluntary plans will have their own claim filing procedures with the entity administering the plan.</p> <p>The ESD has advised that an employee must file a weekly claim to receive benefits, and that the weekly claim can only be made after the end of the week being claimed. The ESD also provides that no more than four weeks of claims can be made at one time except in limited circumstances, such as backdating for good cause (see below).</p>
<p>52.</p>	<p>How will employers know if an employee has filed a claim for WA PFML benefits?</p>	<p>The ESD will notify a covered employer, if applicable, not more than five business days after an employee has filed a claim for benefits.</p> <p>Additionally, the employee is obligated to provide their employer with written notice of the need for leave. For foreseeable leave, an employee must give their employer at least 30 days’ written notice. For unforeseeable leave, an employee must give their employer written notice as soon as practicable. Written notice need only be given one time per leave, but the employee must inform the employer as soon as practicable if the dates of the leave change, are extended or were initially unknown.</p>
<p>53.</p>	<p>Can an employer object to an employee’s application for WA PFML benefits?</p>	<p>Yes. If the employer contests an initial application for family or medical leave benefits, the employer must notify the employee and the ESD in a manner prescribed by the ESD within 18 days of receipt of notice from the ESD of the employee’s filing of an application for benefits.</p> <p>Failure to contest an initial application in a timely manner constitutes a waiver of objection to the application for WA PFML benefits.</p>
<p>54.</p>	<p>What information will the ESD request from employees when filing for weekly benefits?</p>	<p>For the week that the employee is claiming, the ESD will ask if the employee:</p> <ul style="list-style-type: none"> • worked during the week and for the hours associated with that work; • received any paid leave such as sick leave, vacation leave or other paid time off provided by the employer and the hours associated with that paid leave; • received any benefit that may disqualify the employee for paid family or medical leave, such as unemployment insurance; and • experienced a change in the qualifying event that affects the eligibility for, or duration of, WA PFML benefits. <p>The employee may also be asked to provide additional information.</p>

55.	<p>What claims forms will be used and what claim information will an <u>employee</u> be required to submit?</p>	<p>Claim forms are not yet available. The ESD has advised that claim forms will not be available until January 1, 2020. The ESD has advised that the employee must provide information sufficient for the ESD to determine the eligibility for the benefits. This information includes, but is not limited to, information identifying the employee, the type and anticipated duration of leave, as well as certification or documentation to validate the qualifying event.</p> <p>If an employee is in a claim year, and needs additional periods of benefits for the same qualifying event beyond what was originally approved, the employee must update the application.</p> <p>If an employee experiences a new qualifying event during a claim year, the employee must reopen the claim and provide additional information required by the ESD before benefits can be paid.</p> <p>Employees will also be asked to consent to the disclosure of information or records deemed private and confidential and, if applicable, provide a disclosure to the healthcare provider (HCP) to release records in support of the claim.</p> <p>If employed at the time of leave request, the employee must also provide attestation that they have provided written notice of the need for leave to the employer.</p>
56.	<p>What will be required for the certification for medical leave or for family leave to care for a family member who has a serious health condition?</p>	<p>When leave is taken because of an employee’s own serious health condition or the serious health condition of a family member, certification from HCP will be required. The HCP certification must include:</p> <ul style="list-style-type: none"> • the name, address, telephone number and contact information of the HCP and the type of medicine the HCP is licensed to practice; • the anticipated duration of leave; • other information as requested by the ESD to determine eligibility; and either: <ul style="list-style-type: none"> ✓ for medical leave, information from a healthcare provider that the employee has a serious health condition; or ✓ for family leave, information sufficient to establish that the family member has a serious health condition requiring physical or psychological care.
57.	<p>What will be required for the certification for family leave to bond with a new child?</p>	<p>When family leave is taken to bond with the employee’s child after birth or placement, the ESD may request a copy of:</p> <ul style="list-style-type: none"> • the child’s birth certificate; • certification from a health care provider; • court documents to show placement; or • other reasonable documentation to substantiate the qualifying event.

58.	What will be required for the certification for family leave for a military exigency?	<p>When family leave is taken because of a qualifying military exigency, the employee will be required to provide documents or information such as:</p> <ul style="list-style-type: none"> • active duty orders; • the approximate dates in which leave will be needed; or • other information to substantiate the qualifying event.
59.	How will an employee prove a family relationship?	<p>The ESD may request documentation or information from the employee that is sufficient to establish the appropriate familial relationship for the purposes of benefit eligibility.</p>
60.	How is Healthcare Provider defined under WA PFML?	<p>Healthcare Provider means:</p> <ol style="list-style-type: none"> 1. a physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices; 2. nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice; 3. a healthcare provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the healthcare provider's practice as defined under such law; or 4. any other provider permitted to certify the existence of a serious health condition under the federal FMLA.
61.	What happens if the ESD has a question about whether an employee is qualified for benefits?	<p>The ESD will send interested parties a notice when it needs to know whether an employee is qualified for benefits prior to making a determination on the claim. The notice will include:</p> <ul style="list-style-type: none"> • the ESD's questions regarding the employee's qualifications for benefits; and • the date by which the interested parties must respond. This date will be no earlier than five calendar days from the date the notice is sent. Reasonable mailing time will be added when the notice is sent via postal service. • the employee has a right to respond to the ESD on qualification issues. <p>If an interested party fails to respond by the due date on the notice provided, the ESD will make a determination based on available information.</p> <p>If benefits are denied because the employee did not respond to a request for information, the denial will remain in effect until the employee provides sufficient information to establish that the employee is qualified for the WA PFML benefits.</p>

62.	Who are “interested parties” under the WA PFML law?	<p>The ESD has provided that in all determinations, cases and appeals adjudicated under the WA PFML, the ESD is an “interested party” and that other interested parties in family or medical leave determinations related to the state plan and appeals include:</p> <ul style="list-style-type: none"> • The employee or former employee • An employer or former employer of that employee who is required to provide information to the ESD related to the determination or appeal in question <p>Other interested parties in family or medical leave determinations related to a voluntary plan include:</p> <ul style="list-style-type: none"> • The employer or former employer • An employee or former employee who is required to provide information to the ESD related to the determination or appeal in question <p>Other interested parties in a determination related to the small business assistance grant include the employer requesting the grant.</p>
63.	Are employees ever “conditionally paid” benefits?	<p>Yes. If an employee has received one or more benefit payments, is in continued claim status, and his or her eligibility for benefits is questioned by the ESD or contested by the employer, the employee will be conditionally paid benefits without delay for any periods for which the employee files a claim for benefits, until and unless the employee has been provided adequate notice and an opportunity to be heard.</p> <p>The employee may request that the ESD hold the condition payments until the question of eligibility is resolved.</p> <p>An overpayment for a conditionally paid week cannot be waived and must be repaid.</p>
64.	When is an employee required to reopen a claim?	<p>During leave, an employee whose employer has claims managed by the state program must file a claim each week to receive benefits. Information on filing weekly claims is available here.</p> <p>In the state run program, employees can only claim medical leave or family leave during a single claim week even if they have a partial week of either type leave available.</p> <p>Additionally, employers need to provide bonding documentation even if switching from medical leave for birth to family leave to bond with their baby.</p> <p>Voluntary plans administered through Third Party Administrators have significantly more flexibility in claims administration. Third Party Administrators rarely require weekly filing and are not likely to require bonding documentation following a certified medical leave following childbirth.</p>

65.	Can an employee obtain benefits for periods of leave that occurred before the claim was filed?	<p>The ESD has indicated that generally WA PFML benefits are payable on or after the date the employee applies for benefits. However, an application can be “back dated” for good cause or for the convenience of the ESD.</p> <p>The ESD has provided that “good cause” means factors that prevented an employee from applying for benefits prior to or at the time of need for paid leave such as a serious health condition, a period of incapacity, or a natural disaster.</p> <p>The burden of proof is on the employee and the employee may submit a medical certification from a HCP, evidence of a natural disaster or other information required by the ESD.</p> <p>For “convenience of the department [ESD]” means for the purpose of program administration or situations when accepting timely application or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of staff.</p> <p>An employee who wants to backdate an application or weekly claim must file for benefits during the first week in which the factors that constitute good cause no longer exist.</p>
66.	What is the minimum claim duration?	<p>The minimum claim duration for WA PFML is eight consecutive hours. If an employee reports leave of at least eight consecutive hours in a particular claim week, intermittent leave in increments of at least one hour will also be payable for that claim week.</p>
67.	How is an employee’s typical workweek hours determined?	<p>For salaried employees, the number of hours worked in a week are assumed to be 40, regardless of how many hours actually worked. Typical workweek hours are determined by multiplying the number of weeks in the qualifying period the employee held the salaried position by 40, adding any other hours that were not salaried, if any, and then dividing that amount by 52.</p> <p>For all other employees, typical workweek hours are determined by dividing the sum of all hours reported in the qualifying period by 52.</p>
68.	What are the time standard requirements for decisions and payments on claims?	<p>The ESD will send the first benefit payment to the employee within 14 calendar days after the first properly completed weekly application is received. Subsequent payments must be sent at least biweekly thereafter.</p> <p>If the employer contests an initial application for family or medical leave benefits, the employer must notify the employee and the ESD in a manner prescribed by the ESD within 18 days of receipt of notice from the ESD of the employee’s filing of an application for benefits. Failure to contest an initial application in a timely manner constitutes a waiver of objection to the family or medical leave application.</p>

69.	Can an employer “top-up” the employee’s benefits by making supplemental payments to employees on PFML?	<p>Yes. The employer may offer supplemental payment to employees to top up the payments received from the state so that the employee is receiving full wage replacement. Supplemental payments can be taken from vacation, paid sick leave or paid time off. These “top-up” agreements would be mutually agreed upon. The employer does not have to offer to “top-up” benefits and the employee does not have to accept the employer’s offer to “top-up”.</p>
70.	What are the timing requirements for appeal of an adverse decision?	<p>An aggrieved party may file an appeal to the ESD by using the its online services, or in another format approved by the ESD.</p> <p>An appeal must be filed within thirty days of the date the notification or mailing, whichever is the earlier.</p> <p>Late appeals will be sent to the office of administrative hearings to determine if the appellant had good cause to file a late appeal.</p> <p>The following factors shall be considered in determining whether good cause exists for the late filing of an appeal or a petition for review:</p> <ul style="list-style-type: none"> a) The length of the delay; b) The excusability of the delay; and c) Whether acceptance of the late filed appeal or petition for review will result in prejudice to other interested parties, including the department. <p>In determining the excusability for the late filing of an appeal or petition for review, the office of administrative hearings or the commissioner's review office will consider:</p> <ul style="list-style-type: none"> a) Whether any physical, mental, educational or linguistic limitations of the appealing or petitioning party exist, including any lack of facility with the English language; and b) The length of the delay in filing. Untimely appeals filed after the filing deadline require a more compelling reason commensurate with the length of the delay.

Section 9: Voluntary plans

71.	What are voluntary plans?	<p>Voluntary plans are PFML programs run by the employer or administered on behalf of the employer by an absence administrator. Employers can choose to use a voluntary plan for family leave, medical leave or both.</p> <p>A number of requirements apply to voluntary plans, including but not limited to, that benefits available to employees covered by a voluntary plan must meet or exceed the state plan’s benefits and that the voluntary plan must cover all employees of the employer.</p>
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72.	Can an employer apply for a voluntary plan for either medical leave or family leave?	<p>Yes. An employer may apply for a voluntary plan for either the medical leave benefits, or the family leave benefits, or for both.</p> <p>If the employer elects to have a voluntary plan for either family leave or medical leave, but not both, the employer is responsible for withholding the employee share of the premium and for remitting premium to the ESD for the portion that is covered by the state plan.</p>
73.	Can an employer retain an insurer or third party administrator (TPA) to provide PFML through a voluntary plan?	Yes.
74.	When can employers apply to have a voluntary plan approved?	<p>The ESD is accepting applications for voluntary plans. The voluntary plan application process has three steps:</p> <ol style="list-style-type: none"> 1. Submit the application online 2. Upload employer voluntary plan policy 3. Pay the \$250 application fee <p>A voluntary plan must be in place for at least one year after it has been accepted.</p> <p>For the first three years of a voluntary plan’s existence, re-approval is required every year. After three years, re-approval is required only if you make changes to the plan. All voluntary plan applications will be subject to a \$250 fee, except for mandated renewals.</p> <p>Voluntary plans will take effect on the first day of the quarter immediately following the approval of the plan.</p> <p>If an application for a voluntary plan is denied, employees are covered under the state plan.</p>
75.	What must voluntary plans include?	<p>An employer's voluntary plan must:</p> <ul style="list-style-type: none"> • allow at least the same duration of leave from work as the state plan; • pay at least equivalent total monetary benefits as the state plan; • not withhold more from employee's wages than the state plan permits; and • offer leave for at least the same reasons as the state plan.

76.	What happens if an employer's application for a voluntary plan is denied?	An employer may appeal an adverse decision by the ESD regarding a voluntary plan application.
77.	Are there specific requirements regarding the collection of employee premium?	<p>Yes. Employers may not collect more premium from employees than is permitted under the WA PFML for the state plan.</p> <p>All employee contributions and income arising from an approved voluntary plan that are held by an employer are trust funds that are not considered part of an employer's assets.</p> <p>The employer must maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution.</p>
78.	What are the requirements for an employee to be eligible for WA PFML leave benefits under a voluntary plans?	<p>To be eligible for WA PFML leave benefits under an approved voluntary plan, an employee must have been:</p> <ul style="list-style-type: none"> a) in employment for at least 820 hours during the qualifying period and in employment with that employer for at least 340 hours; or b) covered by an approved voluntary plan through their previous employer. <p>An employee who was eligible for WA PFML benefits under a voluntary plan at a prior employer is immediately eligible for benefits under a new employer's voluntary plan.</p> <p>Employees working for an employer with a voluntary plan who have not yet met eligibility requirements for that plan are eligible for benefits under the state plan provided all other requirements are met.</p>
79.	If an employee terminates employment, is the employee still entitled to benefits from the voluntary plan?	<p>No. An employee is no longer covered by an approved voluntary plan if medical or family leave occurs after the employment relationship with the voluntary plan employer ends, or if the ESD terminates a voluntary plan.</p> <p>An employee who has ceased to be covered by an approved voluntary plan is, if otherwise eligible, immediately entitled to benefits from the state program.</p>
80.	When are benefits due under a voluntary plan?	<p>The initial voluntary plan claim payment must be sent to the employee within 30 calendar days of the first day of leave, or 30 calendar after the receipt of a properly completed application for benefits, whichever is later.</p> <p>Subsequent claim payments must be sent on the established regular pay schedule at intervals of no longer than one month.</p> <p>Failure to adhere to these requirements may result in the termination of the voluntary plan by the ESD.</p>

81.	Can the voluntary plan accelerate benefit payments?	<p>An employer with an approved voluntary plan may, at its discretion, use an accelerated payment schedule. The total monetary benefit paid to the employee must be equal to or greater than that which would have been received under the state plan. When accelerating benefits, the total benefits paid to the employee must be paid over no less than half the length of the leave permitted by the state plan. For example, if the employee is seeking 12 weeks leave for bonding, accelerated benefits must be paid over a period of at least six weeks.</p> <p>Despite any accelerated payment schedule, the length of job-protected leave must match that which would be provided under the state plan.</p> <p>If an employer chooses to utilize an accelerated payment schedule and the employee agrees to return to work earlier than required, the employer cannot require the employee to repay benefits as a result of returning to work earlier.</p> <p>Example: An employee elects to take 12 weeks of leave for the birth of a child. The weekly benefit amount is \$750. The employer decides to pay the employee \$1,500 weekly over six weeks. In addition, the employer and the employee agree that the employee will return to work after six weeks. In this example, the employee would still have been permitted to take the full 12 weeks of leave if the employee had decided to do so.</p>
82.	How is duplication of state and voluntary plan benefits avoided?	<p>Employees cannot collect benefits from both the state plan and a voluntary plan for the same period. Employers with an approved voluntary plan must report:</p> <ul style="list-style-type: none"> a) all information required of employers by the state plan; b) weekly benefit and leave duration information for any employee who takes leave under that plan for reasons that would have qualified for leave under the state plan; and c) premiums, if any, withheld from employee wages. <p>Upon request, the ESD will provide weekly benefit, typical workweek hours, and leave duration information to any employer with an approved voluntary plan that requests it for an employee who intends to take leave under that plan.</p>
83.	What if an employer wants to change or amend an approved voluntary plan?	<p>Proposed amendments to the voluntary plan must be submitted to the ESD for review and approval.</p>
84.	What are the rules regarding withdrawal or termination of a voluntary plan?	<ul style="list-style-type: none"> • Employer Withdrawal of Plan. An employer can withdraw from a voluntary plan due to a legally required increase in the benefit amounts or any change in the rate of employee premiums. The employer must provide notice to the ESD at least 30 days prior to the date that the change goes into effect. The plan will be considered withdrawn on the date of the change.

- If the employer chooses to withdraw from a voluntary plan for a reason other than benefit increase or rate change, the employer must provide notice to the ESD at least 30 days prior to the end of a calendar quarter. The voluntary plan will be considered withdrawn on the first day of the following calendar quarter.
- If notice is provided less than thirty days prior to the end of a quarter, the plan will be considered withdrawn on the first day of the second calendar quarter following notice of the withdrawal.
- The employer must remit any deductions from the wages of an employee remaining in the possession of the employer, along with interest thereon, to the ESD within 30 days of the effective date of the withdrawal.
- For employees currently receiving paid family or medical leave benefits on the effective date of a voluntary plan withdrawal, the employer will have the option to:
 - (i) Continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or
 - (ii) Immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the voluntary plan, regardless of the duration of leave that is actually taken.
- **ESD Termination of Plan.** The ESD can terminate an employer's voluntary plan. The ESD will notify the employer of the effective date and the reason for termination. In addition, the ESD will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including premiums paid by the employer, premiums paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys. The amount will be due immediately. Any balance owed will not start collecting interest until thirty calendar days after the date of the invoice.
- Benefit eligibility under a voluntary plan must be maintained for all employees covered by that plan until the effective date of termination or withdrawal.
- Employers are required to notify employees of any plan withdrawal or termination within five business days of notification by the ESD of the effective date of termination or withdrawal.
- On the effective date of a voluntary **plan termination by the ESD**, employees currently receiving WA PFML benefits are, if otherwise eligible, immediately entitled to benefits from the state program.
- For employees currently receiving WA PFML benefits under a voluntary plan, on the effective date of a voluntary plan **withdrawal by the employer**, the employer will have the option to:

		<ul style="list-style-type: none"> ✓ continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or ✓ immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the voluntary plan, regardless of the duration of leave that he actually taken. • On the effective date of either a voluntary plan termination or withdrawal, employees currently taking WA PFML are, if otherwise eligible, entitled to the job protection provisions of the WA PFML until the leave ends.
85.	What are the reasons that may prompt the ESD to terminate a voluntary plan?	<ul style="list-style-type: none"> • The ESD may terminate a voluntary plan if there is a risk that benefits will not be paid or for other good cause shown. • Good cause includes but is not limited to an employer's failure to: <ul style="list-style-type: none"> ✓ pay timely and accurate PFML benefits; ✓ provide leave for a qualified event; ✓ protect the employment and employment benefits of an employee when required; ✓ provide complete quarterly reports; ✓ report to the ESD any amendments made to the voluntary plan; ✓ adhere to the approved voluntary plan; or ✓ adhere to the requirements of the WA PFML.

Section 10: Interaction of PFML and STD

86.	Will our short term disability insurance policy or program qualify as a voluntary plan for medical leave?	<p>No. Typical short-term disability policies could not be used to meet PML voluntary plans because, among other reasons, typical STD policies:</p> <ul style="list-style-type: none"> • do not extend eligibility to part time workers; • would not pay intermittent leave benefits; • would require a standard of disability and not just serious health condition; • may require a continuous waiting period for at least some disabilities before benefits are payable; and • include restrictions and limitation such as pre-existing condition clauses.
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87.	Should employers cancel their disability insurance policies or programs?	<p>No. There are several reasons that STD is still valuable.</p> <ul style="list-style-type: none"> • STD policies typically include a maximum weekly benefit designed to provide income protection to the majority of the employees of the employer, whereas Washington’s maximum benefit is adjusted each September 1st to take effect the January 1st thereafter (for 2021, the maximum benefit is \$1,206 per week). • Due to the ability to take intermittent leave on PML, an employee may exhaust their medical leave time before going out continuously when STD benefits would be payable. • PFML shares a combined maximum amount of time. If an employee uses 12 weeks of family leave, they will only have four weeks of medical leave available; therefore, STD would be necessary to bridge the gap to Long-Term Disability coverage should the employee become disabled.
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Section 11: Interaction with of WA PFML other leave laws

88.	How does PFML interact with Washington’s Paid Sick leave law?	<p>Employers in Washington must provide paid sick leave (PSL) to their employees (PSL law effective Jan. 1, 2018).</p> <p>PSL can be used:</p> <ul style="list-style-type: none"> • To care for the employees’ health needs or the health needs of the employees’ family members. • When the employee’s workplace or their child’s school or place of care has been closed by order of a public official for any health-related reason. • For absences that qualify for leave under the state’s Domestic Violence Leave Act. <p>PSL is an employer-run program and may be paid during the waiting period for PFML benefits.</p>
89.	How will WA PFML interact with the federal Family and Medical leave Act (FMLA)?	<p>Washington’s PFML is a statewide program. The FMLA is a federal program. In short, the state’s program does not replace or preempt the federal FMLA. There are times where an employee’s WA PFML leave will be concurrent with FMLA if the employee is eligible for both leaves, has entitlement remaining, and the leave reason is covered under both laws. There are times when the leaves will not run concurrently based on lack of eligibility, the difference in covered family members, leave exhaustion, etc.</p>
90.	How will WA PFML interact with Washington’s existing Family Leave Act?	<p>The state’s existing Family Leave Act provides unpaid job-protected leave from work for covered family and medical leave reasons. This law will sunset on December 31, 2019, and paid, job-protected leave will be available thereafter under the WA PFML.</p>

Section 12: Grants available to small employers

91.	What type of assistance is available to small employers?	<p>Grants are available for small employers to help cover the costs of hiring temporary employees when their employees use Paid Family and Medical Leave.</p> <p>Grants of up to \$3,000 are available and can be issued 10 times per year to a single employer. A grant of \$1,000 is available to employers who experience significant wage-related costs (discussed below) due to an employee’s leave when using PFML.</p>
92.	What are significant wage-related costs for the purposes of small business assistance grants?	<p>Significant wage-related costs are added expenses incurred by the small business due to an employee’s use of leave and include:</p> <ul style="list-style-type: none"> (1) paying additional wages to an existing employee; (2) outsourcing costs; (3) certification; (4) equipment purchases; or (5) other costs that ESD, in its discretion, deems appropriate.
93.	Which businesses are eligible for small business assistance grants?	<p>Employers determined to have one hundred fifty or fewer employees in the state that are assessed the employer share of the premium are eligible to apply for small business assistance grants.</p> <p>Employers determined to have fewer than fifty employees are only eligible to apply for a small business assistance grant if they opt to pay the employer share of the premiums. The employer will be assessed the employer share of the premium for a minimum of three years after any grant is received. An employer may provide notice for opting out after the three-year period.</p> <p>An employer may request only one grant for each period of paid family or medical leave taken by an employee.</p> <p>The following do not qualify as grant applications and therefore do not count against the employer's limit of ten applications per year.</p> <ul style="list-style-type: none"> (a) An employer that qualifies for a grant for an amount that is less than one thousand dollars may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds. (b) An employer may submit a revised application for a grant in an attempt to qualify for additional grant funds. <p>An employer must apply for the grant no later than four months following the last day of the employee's paid family or medical leave.</p>

<p>94.</p>	<p>What is the application process and what is required to apply for a grant?</p>	<p>Applications for business assistance grants can be submitted online or in another format approved by the ESD and must contain:</p> <ol style="list-style-type: none"> a. the name and Social Security number or individual taxpayer identification number of the employee taking leave; b. the amount and type of grant being requested; c. an explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and d. written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave. <p>Incomplete applications will not be reviewed and will not count against an employer's limit of 10 applications per year (discussed below).</p> <p>The ESD will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:</p> <ol style="list-style-type: none"> 1. It hired a temporary worker or incurred any significant additional wage-related costs; or 2. The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave. 3. If a grant application is denied, the application will count against an employer's limit of ten applications per year. 4. The denial of a grant application is appealable.
<p>95.</p>	<p>How often can a small employer apply for a grant?</p>	<p>An employer may request one grant for each period of PFML taken by an employee.</p> <p>Employer are limited to 10 applications per year.</p> <p>An employer that qualifies for a grant that is less than \$1,000 may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.</p> <p>An employer may submit a revised application for a grant to qualify for additional grant funds.</p>
<p>96.</p>	<p>When can small employers apply for grants?</p>	<p>An employer must apply for the grant no later than four months following the last day of the employee's PFML.</p>

97.	What if my application for a grant is denied?	If a grant application is denied, the application will count against an employer's limit of 10 applications per year and the denial of a grant application is appealable.
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Section 13: Taxes, ancillary benefits and other financial implications

98.	Are FICA, unemployment contributions and other deductions withheld from benefit payments to employees on leave?	The ESD has made no statement regarding the applicability of FICA, unemployment or other relevant payroll deductions in relation to withholding from PFML benefit payments.
99.	Are WA PFML benefits taxable?	The ESD has made no statements regarding the tax treatment of the benefits at this time.
100.	Are WA PFML premium contributions taken from the employee's gross wages?	Premiums are taken from gross wages.
101.	Does the waiver of premium provision invoked by Long-Term Disability or Group Life Insurance Benefits apply if the employee is on WA PFML?	Typically, employees must meet the contractual definition of disability under the policy of insurance in order to qualify for waiver of premiums. There will be concurrent periods of medical leave and disability whereby the waiver of premium provision may be invoked. However, approval for medical leave in itself will not qualify the employee for waiver of premium on the group disability or life insurance policy.

Group insurance policies are underwritten by Sun Life Assurance Company of Canada (Wellesley Hills, MA) in all states, except New York. Product offerings may not be available in all states and may vary depending on state laws and regulations.

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