

PAID FAMILY MEDICAL AND COVID EXPANDED LEAVES





Rose Gundersen, VP of Operations and Retail Services
rgundersen@waretailservices.com 360-704-0049

The Road Ahead - WSIA Live Webcast


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Workshop Goals and Agenda

❑ **Goals**

- Improve your workers' comp claims management
- Strengthen your support for employers

❑ **Agenda**


- Nuts and bolts of PFML and COVID expanded leaves
 - ❑ Expanded leaves Q&A:
<https://www.dol.gov/agencies/whd/pandemic/ffcrq-questions>
- Intersections with WC, UI, ADA
- Insights into PFML's benefit processing
- Q&A with Edsonya Charles, the PFML Ombud


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Covered Employer

Paid Family Medical Leave	Expanded PSL & FML
<p>❑ All employers are covered</p> <ul style="list-style-type: none"> ■ Employers < 50 employees may opt out contributing premiums, but can't access small business grant ■ Voluntary plan approved by the ESD <p>❑ Employee count: ESD averages 4 Qtrs employee count after 9/30 each year</p>	<p>❑ Employers with less than 500 employees Q&A 4, 58, 59</p> <p>❑ Exemption for business viability reason if employer has < 50 employees</p> <p>❑ Public employers</p> <ul style="list-style-type: none"> ■ Covered if a non-federal public agency ■ Fed – mostly not covered ■ Q&A #53


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Employer requirements	
Paid Family Medical Leave <ul style="list-style-type: none"> ❑ Deduct and remit premiums <ul style="list-style-type: none"> ■ Can't cure failure to deduct accurately WAC 192-510-065 ❑ Poster notice (50A.20.020) ❑ Notify rights by 5th business day after 7 days of consecutive absence (50A.20.010) ❑ Confidentiality of record & recordkeeping for 6 years (50A.20.030) 	Expanded PSL & FML <ul style="list-style-type: none"> ❑ Poster in every building, email/direct mail, website <ul style="list-style-type: none"> ■ https://www.dol.gov/agencies/whd/pandemic ❑ Not required to provide other languages available ❑ Notify new/current employees ❑ Cannot require employee to find a replacement

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Benefit Funding Source	
Paid Family Medical Leave <ul style="list-style-type: none"> ❑ Insurance premiums (0.4% gross wages) (50A.10.030) <ul style="list-style-type: none"> ■ Employee pays 1/3 Family premiums, 2/3 Medical premiums ■ Employer pays 55% ❑ Employer < 50 employees contribution is optional ❑ Annual rate adjust starts in 2021 <ul style="list-style-type: none"> ■ RCW 50A.10.030(6) 	Expanded PSL & FML <ul style="list-style-type: none"> ❑ Employer pays wages ❑ Claim credit via payroll taxes offset and IRS refund <ul style="list-style-type: none"> ■ Wages, health benefits ■ No payroll tax liability on leave wages ■ Apply credit against employer federal taxes ■ https://www.irs.gov/coronavirus/new-employer-tax-credits ❑ Not available with PPP loan

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PFML reportable wages
<ul style="list-style-type: none"> ❑ All wages paid including <ul style="list-style-type: none"> ■ Cash value of goods, services, prizes ■ Commission, piecework, bonuses, stipends ■ Compensation unrelated to expense reimbursement <ul style="list-style-type: none"> ❑ RCW 50A.05.010(25)(a) ❑ WAC 192-510-025(1) ❑ Max limit on wages = Social Security wage base <ul style="list-style-type: none"> ■ \$137,000 in 2020 ■ Premium calculator (still using 2019 maximum) <ul style="list-style-type: none"> ❑ https://resources.paidleave.wa.gov/premium-calculator

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Benefit effective date and # of events per year

Paid Family Medical Leave	Expanded PSL & FML
<ul style="list-style-type: none"> ❑ Benefit starts 1/1/2020 ❑ More than 1 event per year is allowed ❑ Use within 12 months and can't carry over 	<ul style="list-style-type: none"> ❑ Effective <ul style="list-style-type: none"> ■ April 1 to Dec 31 2020 ❑ More than 1 event per year is allowed

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Employee definition and exemptions

Paid Family Medical Leave	Expanded PSL & FML
<ul style="list-style-type: none"> ❑ All employees (corp officers & domestic workers) ❑ Exempt (opt-in available) <ul style="list-style-type: none"> ■ self-employed ■ Member of an LLC, joint venture, partnership ■ Independent contractor ■ Tribal ■ Out-of-state worker, waiver application (50A.10.040) 	<ul style="list-style-type: none"> ❑ FT/PT in the US, US Territories Q&A #48, 49 ❑ Includes temporary, on leave, jointly employed regardless of payroll record responsibility, day laborers <ul style="list-style-type: none"> ■ Q&A #2 ❑ Exempt from coverage: healthcare workers and first responders Q&A 56, 57

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To qualify for benefits

Paid Family Medical Leave	Expanded PSL & FML
<ul style="list-style-type: none"> ❑ Worked 820 hours <ul style="list-style-type: none"> ■ First 4 out of 5 most recent completed quarters or the 4 most recent quarters ■ Could be with multiple employers 	<ul style="list-style-type: none"> ❑ EPSL does not require work history ❑ EFML <ul style="list-style-type: none"> ■ Employed 30 calendar days

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Initiating benefit	
Paid Family Medical Leave <ul style="list-style-type: none"> Employee may apply without employer's agreement Notify employer in writing: <ul style="list-style-type: none"> 30 days if foreseeable As soon as practicable May result in denial for failure during late period 192-600-005, 015, 020, 025, 030) 	Expanded PSL & FML <ul style="list-style-type: none"> Agreement between employee and employer Employer documentation <ul style="list-style-type: none"> Name of employee Dates of leave requested Reason for leave Statement from employee Entity or health provider's quarantine order document Q&A #15

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Authorized leaves	
Paid Family Medical Leave <ul style="list-style-type: none"> Medical: worker's own serious health condition Family: family's serious health condition or <ul style="list-style-type: none"> Bonding within 12 months of a child's birth or placement Military family needs 12 months per year <ul style="list-style-type: none"> Giving birth 16 weeks (med and family combined) Pregnancy incapacity 2 more weeks 	Expanded PSL & FML <ol style="list-style-type: none"> Quarantine order Q&A #60 Self-quarantine advice by a health care provider Q&A #62 COVID symptoms seeking a medical diagnosis Caring for other(s) in #2, 3 <ul style="list-style-type: none"> Q&A #63-65 Experiencing substantial COVID conditions per HHS Caring for child due to school/place of care closure <ul style="list-style-type: none"> #6 is valid only for EFML

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PFML Employee benefits & waiting period
<ul style="list-style-type: none"> Waiting period: 1st week after leave approval <ul style="list-style-type: none"> No waiting for bonding leave Up to 90% of pay; current maximum is \$1,000/week <ul style="list-style-type: none"> Maximum is 50% of statewide average weekly wage Estimator: https://paidleave.wa.gov/estimate-your-weekly-pay/ \$77,900 annual income receives maximum benefit Minimum 8 hours of consecutive leave per week to receive benefit

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Expanded PSL/FML maximum benefits and waiting period


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


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Expanded PSL/FML benefit calculation


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


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Supplemental benefits

Paid Family Medical Leave	Expanded PSL & FML
<ul style="list-style-type: none"> Employer may choose to offer w/out reducing PFML benefit pay <ul style="list-style-type: none"> WAC 192-500-180 Should draft policy language <ul style="list-style-type: none"> Which PTOs, short-term disability to include Receive more than usual earnings 	<ul style="list-style-type: none"> Employer may choose to pay beyond required wages Q&A #31,34 <ul style="list-style-type: none"> Excess payment portion cannot claim tax credit Employer mandates use of PTOs to supplement? <ul style="list-style-type: none"> Not for EPSL Q&A #32 Yes for EFML if a policy exists Q&A #33


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Family member criteria	
Paid Family Medical Leave <ul style="list-style-type: none"> Child (biological, adopted, foster, step, legal guardian/ loco parentis); "in-law" Jun 2020 Parent/parent in law Spouse (registered domestic partner) Grandchild, grandparent Sibling <p>ESD may request verification WAC 192-610-035 – requested internal policy to ensure consistency</p>	Expanded PSL & FML <ul style="list-style-type: none"> Same as FML <ul style="list-style-type: none"> Q&A \$40 or WHD Fact Sheet 28B Care for others' with COVID condition: those with relationships or with the expectation to care Q&A #64 Includes caring for child (18 or older) with disability incapable of self-care WHD 28K

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Intermittent leave	
Paid Family Medical Leave <ul style="list-style-type: none"> Yes - a minimum of 8 hours of consecutive leave each work week <ul style="list-style-type: none"> 8 consecutive hours may consist of more than 1 shift Use within a year and can't carry over to next year <ul style="list-style-type: none"> http://paidleave.wa.gov/find-out-how-paid-leave-works/ RCW 50A.15.020(2); WAC 192-620-035 	Expanded PSL & FML <ul style="list-style-type: none"> Teleworking if employer and employee reaches an agreement <ul style="list-style-type: none"> Q&A #20 COVID symptom leaves and working at usual worksite must be in full-day due to exposure Q&A #21 <ul style="list-style-type: none"> Exception: caring for child(ren) & employer agrees

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Job restoration and health benefit Same as FMLA in general	
Paid Family Medical Leave <ul style="list-style-type: none"> Health benefit 50A.35.030 Job: same or equivalent position <ul style="list-style-type: none"> 50A.35.010; 192-700-005 Only if => 50 employees and <ul style="list-style-type: none"> Worked => 12 months and => 1,250 for current employer RCW 50A.35.010(6) 	Expanded PSL & FML <ul style="list-style-type: none"> Same as FMLA <ul style="list-style-type: none"> WHS Fact Sheet #28A If leave starts during employee's health benefit waiting period, no change to receiving benefit. Q&A #51

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Employee's right to dispute or file complaints

Paid Family Medical Leave

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

Expanded PSL & FML


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


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Employer's right to protest PFML

- Yes. Information included in
 - Claim notification and determination letters
 - Not on website or toolkit
- 18 days from first notice
 - RCW 05A.050.020(2), 50A.10.050(1), 192-610-060
- 30 days from determination
 - WAC 192-500-040, 192-630-005, RCW 50A.50.010
- Employer may provide information to contest


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Tuesday, April 7 2020

Benefit Application Decision

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

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

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


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

Mail or fax your appeal to:

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


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

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


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Intersection with Workers' Comp	
Paid Family Medical Leave <ul style="list-style-type: none"> ❑ Cannot use concurrently ❑ Relieve guilt of some employers who may allow workers' comp for non-work related events 	Expanded PSL & FML <ul style="list-style-type: none"> ❑ Kept on Salary or Light Duty <ul style="list-style-type: none"> ■ Employer may consider claiming tax credit if the IW has one of the six qualifying events ■ https://www.irs.gov/coronavirus/new-employer-tax-credits

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Intersection with FMLA	
Paid Family Medical Leave <ul style="list-style-type: none"> ❑ Unless permitted by the employer, must take currently with FMLA <ul style="list-style-type: none"> ■ RCW 50A.15.110(2) ■ When employee initiates PFML, employer could document it as FMLA. ■ Employee uses FMLA first may initiate PFML thereafter ❑ Employer's agreement to initiate benefit not required 	Expanded PSL & FML <ul style="list-style-type: none"> ❑ Priority over FMLA for covered employer with qualifying reasons ❑ FMLA may start when expanded leaves are used up

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Intersection with unemployment benefit	
Paid Family Medical Leave <ul style="list-style-type: none"> ❑ May NOT use concurrently ❑ May use when unemployed with qualifying events and worked 820 hours in the qualifying period <ul style="list-style-type: none"> ■ https://paidleave.wa.gov/more-answers/ 	Expanded PSL & FML <ul style="list-style-type: none"> ❑ Cannot receive both concurrently


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Intersection with ADA

American Disabilities Act


- ❑ ADA applies => 15 employees
- ❑ WLAD applies => 8 employees
- ❑ Asking employee's "general health diagnosis" is a disability inquiry prohibited by the ADA
 - Let the employee disclose their "serious health condition" re PFML leave
 - "Health condition" records are confidential or an ADA violation

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COVID/Pandemic and ADA

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


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Paid Leave Ombuds

an independent third party

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

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Rose Gundersen, VP of Operations and Retail Services
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