

# **Washington Paid Family & Medical Leave (PFML)**

*NOTE: The Employment Security Department (ESD) is currently developing rules, operations and technology for this new program and is committed to giving the best information as soon as it is available. You are encouraged to go to* [*www.paidleave.wa.gov*](http://www.paidleave.wa.gov) *for more information.*

OVERVIEW: This is a new mandatory insurance program administered by the Employment Security Department (ESD). The program will give eligible employees in Washington State access to up to 12 weeks of **paid** leave if they need time off to recover from a serious illness or injury, bond with a new child, or care for an aging parent or ill or injured family members.

* Premium collection begins January 1, 2019, and benefits become available January 1, 2020.
* PFML applies to all employers in the State of Washington, excluding Federal government employees, who employ 1 or more employees. Independent contractors (must have their own UBI) are not subject to this law.
* PFML is funded by premiums paid by both employers and employees. Employers **(Congregations)** with less than 50 employees are exempt from paying the employer portion of the premium.
* Paid family leave will provide a weekly benefit based on a percentage of the employee’s average weekly wage, up to a maximum weekly benefit of $1,000, which will be adjusted annually. The minimum weekly benefit will be $100, or the employee’s average weekly wage if less than $100.

ELIGIBILITY & REASONS TO REQUEST LEAVE:

* To be eligible for PFML benefits, an employee must have worked at least 820 hours for any employer in Washington during the “qualifying period” (the first four of the last five completed calendar quarters). This could be a combination of employers (**Congregations**) for clergy.
* PFML provides eligible workers up to 12 weeks of PFML benefits annually for the following reasons:
	+ An employee’s own serious health condition, as defined in the federal FMLA regulations;
	+ Bonding after the birth or placement of a child who is under the age of 18;
	+ A family member’s serious health condition;
	+ Certain military assignments, such as leave for short notice deployments, military events, urgent childcare and related activities, and post-deployment activities
* Family member is defined as spouse, registered domestic partner, child, grandchild, grandparent, parent, and sibling.

BENEFIT PREMIUMS: The law sets the initial premium rate at 0.4 percent of gross wages beginning on January 1, 2019. **Read these details then scroll down for how to calculate the premium.**

* Medical leave benefits equal 2/3 of the premium rate and family leave benefits equal the remaining 1/3.
* The amount of wages subject to a premium assessment is capped at the maximum wages subject to social security tax.
* PFML is funded by premiums paid by both employers and employees:
* Employers are responsible for 55 percent of the medical leave premium. Employees are responsible for 45 percent of the medical leave premium and up to 100 percent of the premiums due for the family leave.
	+ Employers may elect to pay all of the premiums (both the employer and the employee portion).
	+ Employers with less than 50 employees working in the state of Washington are exempt from paying the employer portion of the premium. Employers with less than 50 employees may voluntarily “opt in” to the program.
* All employees must pay the employee share of the premiums (or have it paid for them by the employer (a “paid benefit”).
* Employers may seek a waiver of the premium requirements for employees who are physically based outside of Washington, employed in Washington on a limited or temporary schedule, or not expected to work in Washington for 820 or more hours in a qualifying period.

***As it becomes available, information will be provided on length of leaves, intermittent leave, job reinstatement, employee notice of leave, employee application for benefits, and maintenance of health & other benefits while on PFML.***

As an employer, here is what you need to do right now; starting January 1, 2019 you must:

* Withhold employee premiums or decide to cover them yourself. A description of the premium calculation is provided below, or a premium calculator is available online at [www.paidleave.wa.gov/premium-calculator](http://www.paidleave.wa.gov/premium-calculator).
* Prepare to report all employees’ wages paid, hours worked, SSN or ITIN, and full name. You will need to report the total of all premiums withheld throughout the quarter for all your employees combined.
* First reports and premium payments are due to ESD July 31, 2019. You will use your existing SAW account or create a new one. See below for more.
* Premiums should be withheld from each paycheck. Employers cannot collect missed premiums in later pay periods.

**FOR CONSIDERATION BY THE VESTRY / BISHOP’S COMMITTEE**

* **As an employer with less than 50 employees, make a decision to either (1) budget for the employer portion of the premium or (2) take the small employer exemption from paying the employer portion of the premium.**
* **Decide if you will pay the employee portion of the premium on behalf of your employees, or if you will set it up as a payroll deduction. Maintain parity for premium payment between clergy and lay employees (i.e., you may not pay the employee portion for a clergy person, while requiring lay employees to pay the employee portion – or vice versa).**

PREMIUM CALCULATION:

1. Step One: Calculate the total premium amount for each of your eligible/participating employees. The premium for 2019 is 0.4%, so: ***Gross wages for pay period x .004 = Total Premium.***
2. Step Two: Calculate the employee and employer (if paying) shares. Under the law, employers may split the cost of the program with employees by withholding up to 63.33% of the premium from their paychecks.
	1. ***Total premium x .6333 = Maximum Employee Share***
	2. ***Total premium x .3667 = Minimum Employer Share***

NON-PROFIT EXEMPTION: There is no exemption for non-profit employers. The only exemptions are for the Federal government and federally recognized tribes, although tribes may choose to opt in to the program.

PROVIDED RESOURCES:

* Employer webinar: [www.paidleave.wa.gov/employers](http://www.paidleave.wa.gov/employers).
* Downloadable Employer Toolkit at [www.paidleave.wa.gov/employers](http://www.paidleave.wa.gov/employers).

**VOLUNTARY PLANS/OPTING OUT: Our current diocesan policy does not meet the State threshold to be considered an approved “voluntary plan” for opting out of the State program. Congregations may NOT opt out of participation in the State PFML program.**

EMPLOYER NOTICES: Each employer will be required to post a notice to employees and applicants for employment where notices are customarily posted. Employers must use a standard notice that will be provided by the State or a notice developed by the employer, which must be approved by the State. Employers can be audited to determine if proper notice is displayed. When an employee who is eligible for PFML benefits is absent from work to provide family care or takes medical leave for more than 7 consecutive days, the employer must provide the employee with a written statement of the employee’s rights to take leave under this law. This statement must be provided to the employee within 5 business days after the employee’s seventh consecutive day of absence due to family or medical leave, or within five business days after the employee has received notice that the employee’s absence is due to family or medical leave, whichever is later.

RECORD KEEPING: An employer must keep any employment records related to an employee’s eligibility for leave under this law for a period of six years. Important Note: Records and documentation relating to medical certifications, re-certifications or other medical information of the employee or family members must be maintained as confidential medical records in separate files apart from the employee’s personnel file.

ENFORCEMENT: PFML is enforced by the Washington State Employment Security Department. Retaliation for the lawful exercise of leave under this law is prohibited. An employer who willfully fails to provide the required reports to the State is subject to penalties of up to $250 per occurrence. An employer who willfully fails to remit the full amount of the premiums when due is liable, in addition to the full amount of premiums due and amounts assessed as interest, to a penalty equal to the premiums and interest.

**MORE DETAILS**

WHAT IS THE DIFFERENCE BETWEEN FAMILY LEAVE AND MEDICAL LEAVE? Family leave covers bonding time for the birth or placement of a child, time taken to care for an injured or ill family member (defined as children, spouse, parents, grandparents, and siblings), or certain military connected events, such as short-notice military deployment of a family member. Medical leave covers time taken for an employee’s own injury or illness.

ARE STIPENED “EMPLOYEES” COVERED? There is no special definition of “employee” in the PFML statute. Whether an individual that receives a stipend, such as a volunteer firefighter, is considered an “employee” is a case by case determination based on several specific factors, as interpreted in case law. If such a worker would be considered an “employee” for other purposes (such as wage and hour law, employment discrimination law, etc.), then they likely would be considered an employee covered by PFML as well.

HOW IS COMPANY HEADCOUNT CALCULATED? Headcount is calculated based on the number of paid employees working in Washington, including full-time, part-time, temporary, and paid interns. Under current proposed rules, business size for early 2019 will be calculated using the headcount from your first quarter report (January-March). On September 30, 2019, the ESD will average the number of employees reported over the quarters for which reporting exists to determine employer size for calendar year 2020. For job restoration purposes, the law states that “an employer shall be considered to employ fifty or more employees if the employer employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year.”

WHAT IF WE HAVE COMMON OWNERSHIP WITH ANOTHER WASHINGTON COMPANY? PFML looks at the UBI number to determine headcount. If each company under common ownership has separate UBI numbers, each company would be determined to be a separate entity.

IS A NEW EMPLOYEE, WHO HAS MET THE 820 HOURS THROUGH ANOTHER WASHINGTON EMPLOYER, ELIGIBLE TO TAKE LEAVE IMMEDIATELY UPON EMPLOYMENT? Employees are eligible for benefits after working at least 820 hours for any Washington employer. Additionally, if an employee works a second job, all hours worked for both jobs will count toward the hours worked. However, although an employee may be eligible for benefits through the State plan, the employee may not yet have enough tenure to be eligible for job protection/reinstatement under the PFML program. So, the employee may be eligible for benefits from the state, but you may not need to hold their job for them (subject to further analysis under paid sick leave, ADA, etc.).

COULD AN EMPLOYEE TAKE MULTIPLE LEAVES UNDER PFML? The PFML benefit is for 12 weeks (or 16 or 18, depending on the type of leave) of PFML each year, based on a rolling 52-week cycle. So, yes, an employee could potentially take PFML for multiple reasons during the year, but only up to the maximum amount of annual leave.

DOES PFML RUN CONCURRENTLY WITH FMLA? FMLA can run concurrently with PFML for employees that are eligible for both benefits. However, since eligible absences under FMLA start on the first day of the employee’s absence and an employee may choose to first use PTO or sick leave before applying for benefits under PFML, FMLA protection could end before PFML runs out. If an employee is not yet qualified for FMLA, the employee may still be eligible for PFML benefits, but would not qualify for reinstatement rights under the FMLA. More rules about the interaction of PFML and FMLA will be developed throughout 2019.

WHAT IF AN EMPLOYER IS SELF-INSURED FOR WORKERS COMPENSATION? IN THAT CASE, WHAT IS THE INTERSECTION BETWEEN PFML AND TIME LOSS? The PFML statute does not allow an employee to receive both time loss and PFML at the same time. It should not make any difference whether an employer is self-insured for workers compensation.

CAN AN EMPLOYER OFFER A VOLUNTARY PLAN TO SOME EMPLOYEES AND OTHERS COULD PARTICIPATE IN THE STATE PLAN? No, if an employer provides a voluntary plan for medical and/or family leave, the voluntary plan must apply to all employees. However, within a voluntary plan, an employer could provide multiple tiers of benefits by employment classification (i.e. exempt versus non-exempt or regular versus temporary) as long as the minimum benefit required under the law is provided to all employees.

ADDITIONAL NOTES FROM QUESTIONS:

The 820 hours are cumulative, regardless of the number of employers or jobs someone has in the state of Washington during the qualifying period. If an employee works only for you and you expect that they will work less than 820 annually then you can apply for a conditional waiver from the premium payment; here’s the link: <https://www.paidleave.wa.gov/waivers>.

If, however, the employee works for you and for additional employers in other part time positions and will accumulate 820+ hours in the state of Washington, then you will need to remit the premiums for that employee for the hours they work for you.