

WASHINGTON PAID FAMILY AND MEDICAL LEAVE IS IMMINENT: ARE YOU READY?

Insights
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Washington employers, get ready. Starting January 1, 2019, the state's Employment Security Department (ESD) will begin collecting premium payments from employers so the historic Paid Family and Medical Leave (PFML) program can be implemented. While the benefits will not be able to be accessed by workers until 2020, don't be fooled into thinking that you still have another year to prepare for this new law; you need to begin your preparations now. What do Washington employers need to know to get ready?

THE BASICS

Under Washington's new PFML program, eligible employees will be entitled to paid leave up to 12 weeks for "qualifying events," such as their own serious health condition or to care for sick family members (with up to 16 weeks combined family and medical leave), and up to two additional weeks for certain pregnancy complications. These benefits, not accessible until 2020, will be available to employees who have worked at least 820 hours for a covered employer in the prior four out of five complete calendar quarters before the need for leave.

IMMEDIATE STEPS YOU NEED TO TAKE

There are three main steps you will need to take starting January 1: collect premiums from your workers, provide the proper notice, and determine whether you will be remitting your share each quarter.

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- **Collecting Premiums:** All employers must start collecting the employee's share of the premiums program after January 1, 2019. The total premium for 2019 is 0.4% of the employee's gross wages, to be shared by the employer (37 percent) and employee (63 percent). These premiums must be collected each paycheck. The premium collection rule applies regardless of your total number of employees. The definition of covered employees is also broad: it includes not only employees who perform work in Washington, but also employees who live in Washington or whose work is directed from Washington, as well as if the employer's "base of operations" is in the state.
- **Providing Notice:** You must give notice to employees of the new deduction at least one pay period in advance of the first premium collection. To help, ESD has provided a sample notice to include with paychecks, [found here](#).
- **Remitting Your Share:** Most employers must also plan to remit the employer's share of the premiums each calendar quarter. Employers with fewer than 50 "Washington" employees are not required to pay the employer portion of the premium, but may want to opt in. The law provides small business grants to employers with fewer than 50 employees who have opted in and to employers with 50 to 100 employees. These are designed to help cover costs associated with replacement labor during the period of an employee's PFML.

FIRST QUARTER 2019 STEPS—AND BEYOND

There are also a host of additional considerations you should take into account for the first quarter of 2019 and beyond. Here is a good list of things you should consider for the new year:

- **Schedule Quarterly Premium Payments:** You must get ready to remit all of the premiums each calendar quarter. The first quarterly deadline will be April 30, 2019. ESD is building a secure account management system where employers will file reports, pay premiums, and apply for voluntary plans, among other things, but it is still being developed.
- **Reporting Requirements:** All employers must also be ready to meet other PFML reporting requirements by April 30, 2019, and each calendar quarter thereafter. This

includes, for example, information such as hours worked and total employee pay broken down by employee SSN. While some of the information is similar to unemployment reporting obligations, this is a different reporting requirement, so make sure you are familiar with it.

- **Voluntary Leave Plans:** You must not assume that any current paid leave policies you have in place are sufficient to comply with Washington's new law. In fact, any voluntary plan—which must meet all of the PFML benefits standards, qualifying reasons, and other requirements—must also be approved by ESD in order to be considered sufficient. While it's too late to apply for approval before the end of 2018, you can plan ahead if you would like to take advantage of your own organization's plan later in 2019. Without approval by the end of the prior quarter, though, you still must collect and remit the premiums for the following calendar quarter.
- **Stay Alert For Further Details:** You should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information, and you can also monitor [ESD's website](#) for updates. The state will be setting up the online reporting system, developing and releasing a mandatory rights poster to be displayed at your worksite, developing a rights notice form that you must provide to your workers, and finalizing the administrative regulations. Once each of these steps occurs, you will need to take action to adopt them to your workplace policies and practices. We remain hopeful that the implementing regulations will help answer common questions that still linger, such as how to navigate situations where we'll see the intersection of paid sick leave situations, short-term disability plans, and FMLA leaves.
- **Pencil In Training Sessions:** You should plan to conduct training for human resources, management, and supervisors so they are aware of their obligations and your company's procedures once the paid leave system is in place. You'll want to wait to do so until all the regulations are adopted, but you can plan now to ensure these occur before the close of 2019.

SOME CONSEQUENCES FOR FAILED COMPLIANCE

Employers who fail to collect the employee's share of the premium will be stuck having to pay it. And you cannot go

back any length of time to collect missed premium deductions.

ESD will have broad authority to audit, investigate complaints, and impose penalties. The agency can file a civil suit, which must be given priority hearing, to force payments. If an employer fails to remit required payments, for example, the employer must pay the entire balance owed, plus 1 percent monthly interest (compounded), and double those amounts as penalties.

CONCLUSION

The law is complex, and as with any new law, challenging. For help with compliance steps or to answer questions, please contact your Fisher Phillips attorney or any attorney in our [Seattle office](#).

This Legal Alert provides information about a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.