



Washington Expands And Clarifies Paid Family Medical Leave Law

Insights

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Although most employers have been distracted by the COVID-19 coronavirus crisis, Washington's governor recently signed into law changes and clarifications to the state Paid Family and Medical Leave (PFML) law that all employers will need to know about. Washington's law already provides paid leave benefits to nearly all employees for specific family and medical reasons and has been in effect since January 1, 2020. But while many employers are still learning the mechanisms for reporting and complying with its provisions, all Washington employers will now need to adjust once again to keep up with the changes. The most significant changes include:

- A new definition and exemption for casual labor from the types of covered employment;
- A new private right of action to employees and new enforcement provisions; and
- Numerous small changes to waiting periods, conditional waivers, and supplemental benefits.

Casual Labor – Defined And Exempt

Effective March 25, 2020, "casual labor" is now exempted as a type of employment covered under the PFML program – meaning employees who perform casual labor are not eligible for PFML benefits. "Casual labor" means work that is (1) performed infrequently and irregularly; and (2) if performed for an employer, the work does not promote or advance the employer's customary trade or business.

The amendments further clarify that infrequent and irregular casual labor is performed 12 or fewer times per calendar quarter and not on a "consistent cadence." This type of work takes a variety of different forms but will likely look like "odd jobs" around the workplace and will most likely apply to small employers who occasionally need an extra set of hands.

A Private Right Of Action

Starting June 11, 2020, employees will have the right to bring a private right of action to recover damages "against any employer" for PFML violations. Critically, the amendment specifically provides that employees may assert class action claims against employers in addition to individual claims.

Plaintiffs will also have the right to recover their attorneys' fees, witness fees, and costs from the employer. The new law also provides that any complaint filed with the Employment Security

Department (ESD) must be withdrawn or resolved before an employee may bring a complaint in Washington State Superior Court.

In short, an employee cannot have a concurrent complaint with the Employment Security Department and a pending lawsuit. Nevertheless, under new enforcement provisions, ESD retains the right to investigate violations within three years of a complaint and issue determinations requiring damages, attorneys' fees and costs, and even liquidated damages against employers.

Other Changes To The PFML Program

Other miscellaneous updates include:

Definitions

- The definition for typical work week hours has been modified to be the average number of hours worked *within* the qualifying period as opposed to "since the beginning" of the qualifying period;
- A "child's spouse" is now included in the definition of "child" for purposes of PFML coverage; and
- "Paid time off" and "supplemental benefit payments" are now defined to correspond with the amendments regarding supplemental benefit payments.

Supplement Benefit Payments

It is now clear that supplemental benefit payments, such as payments made to an employee pursuant to an employer's paid time off or vacation policy, will not reduce an employee's PFML benefit amount.

Child Support Obligations

Child support obligations may now be deducted from PFML benefits.

Conditional Waivers

Conditional waivers have been modified so that an employer may file an application for a waiver of premium payments for employees:

- Who *primarily perform work* outside the state; and
- Are not expected to be employed in the state for 820 hours or more in a period *of four consecutive completed calendar quarters*.

This section also requires the signatures from the employer and employee to attest to the specific conditions of the waiver and further provides that a conditional waiver will expire if any of the conditions of the waiver are no longer satisfied.

Time Periods

The waiting period for benefits now begin the previous Sunday of the week that the eligible employee takes the minimum eight hours of leave. During that waiting period, employees may now receive

paid time off for any part of the waiting period.

Conclusion

We will continue to monitor further developments, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have any questions, please contact your Fisher Phillips attorney or any attorney in our [Seattle office](#).

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