
Paid Family & Medical Leave

Washington Public Ports Association

Richard A. Davis III & Frank J. Chmelik

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Roadmap

- Overview of Washington's new Paid Family & Medical Leave (PFML) law.
- Recent developments.
- Basics of how the PFML law works.
- Important issues for Employers.
- Identify unresolved issues.



Leave Laws



Paid Family and Medical Leave

- Washington's new Paid Family and Medical Leave law is a mandatory insurance program administered by the Employment Security Department (ESD).
 - Effective January 1, 2019, ESD started collecting premiums from employers.
 - Effective January 1, 2020, ESD will start paying PFML benefits to eligible employees as *partial* wage replacement for certain family and medical reasons.



Amendments to Paid Family Medical Leave Program

- HB 1399 - Signed into law on April 3, 2019.
 - Allows supplemental benefit (i.e., “top off”) payments.
 - Clarified waiting period is 7 calendar day beginning after an employee takes at least eight hours of PFML leave.
 - Allows new hires to immediately go onto approved voluntary plans.

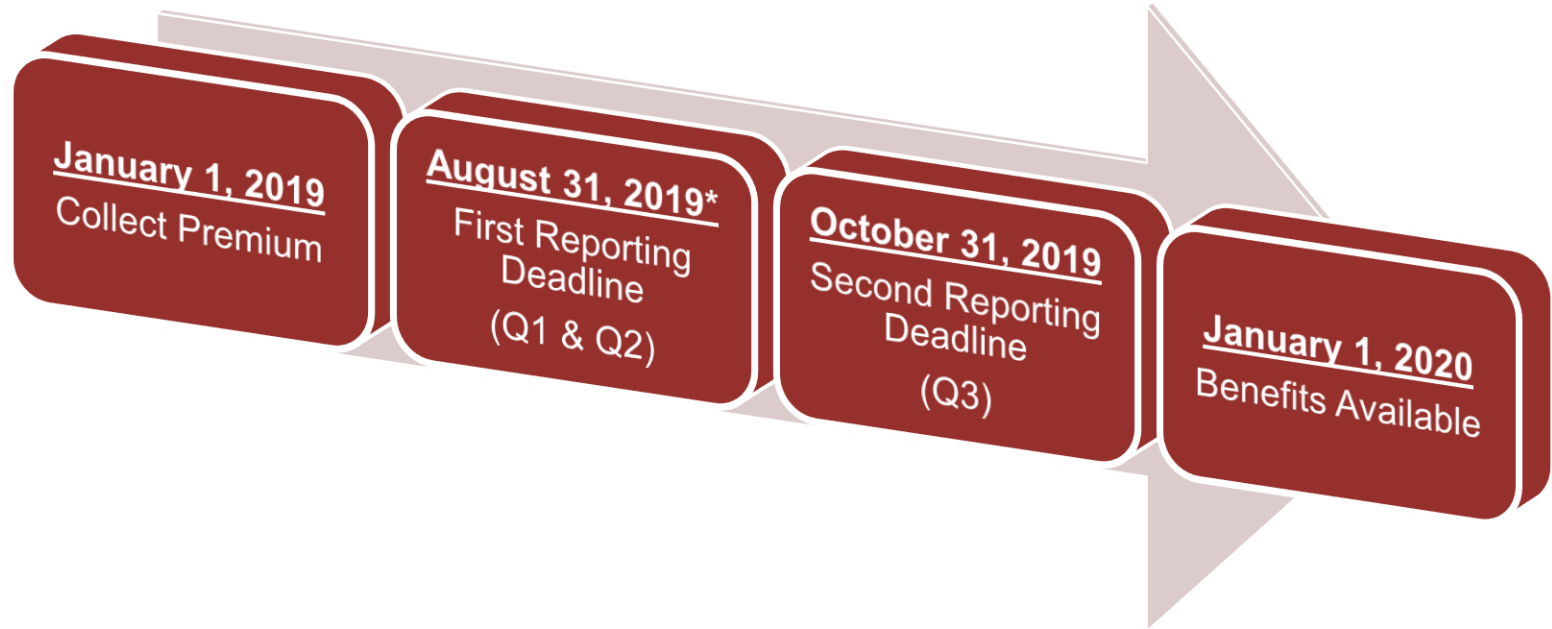


Rulemaking Process Status

Phase	Status	Topics
Phase 1 – 5	Final	
Phase 6	Draft	<ul style="list-style-type: none">• Definitions• Assessing and collecting premiums• Voluntary plans• Small business assistance• Dispute resolution• Employee notice to employer• Initial application for benefits• Weekly benefits• Appeals and procedure



Timeline



* DES will not be assessing penalties or interest on W1 and Q2 reports filed after August 31, 2019



Basics of Paid Family And Medical Leave



Premiums

- Premium payment required for nearly all employees.
 - No exception for elected officials (e.g., commissioners).
 - No exception for individuals receiving a stipend (e.g., volunteers).
- Total Premium = 0.4% of the employee's wages up to Social Security cap (\$132,900 in 2019).
 - Employee's Share of Total Premium = 63%

EXAMPLE: For every \$128 paid to a Port Commissioner, a maximum of \$0.32 may be withheld



Eligible Employees

- Benefits only available to employees that have worked at least 820 hours during:
 - (1) The first 4 out of the last 5 completed calendar quarters; or
 - (2) The last 4 completed quarters immediately preceding the application for leave.
- Portable benefit: Applies to hours worked by employee for all employers



Qualifying Leave

- Medical Leave:
 - Must be a serious health condition (FMLA definition).
 - Ordinary health conditions not qualifying (unless complications arise).
- Family Leave:
 - Care for a newborn or newly-adopted child.
 - Care for a family member with a serious health condition.
 - Military qualifying exigency (FMLA definition).



Duration of Leave

- Medical Leave:
 - 12 weeks (or 14 weeks total if a pregnancy-related condition that results in incapacity).
- Family Leave:
 - 12 weeks.
- Combination of Family and Medical Leave:
 - 16 weeks (or 18 weeks if a pregnancy-related condition that results in incapacity).



Benefit Application Process

- To receive PFML benefits, employee must file application with ESD.
 - ESD will send notice to Employer.
 - ESD must respond to notice and may contest eligibility.
 - ESD pays Employee benefits directly.



Waiting Period

- No benefits paid for seven (7) consecutive calendar days following the date when an otherwise eligible Employee takes the minimum 8-hour claim duration.



Benefit Amount

- Percentage of Employee's average weekly wage during two (2) highest quarters within the qualifying period. RCW 50A.15.020
 - Weekly Max: \$1,000 (will be adjusted each year)
 - Weekly Min: \$100 or actual average weekly wage, whichever is lesser.
- Question: What about use of Paid Leave to “top off” benefits?
 - HB 1399, signed into law on April 13, 2019 allows supplemental benefit payments for top off.



Employment Protection

- Employee is eligible for job protection if (1) Employer has 50 or more employees, (2) Employee worked for Employer for 12 months or longer, and (3) Employee worked 1250 hours in the year to date before the first day of leave.
 - Same or equivalent position.
 - Equivalent pay and benefits.
 - No forfeiture of accrued benefits.
 - Employer must maintain insurance benefits if required under FMLA.



Employer Issues



Premium Deduction Rules

- Premiums must be withheld with each paycheck or paid by employer on the employees' behalf.
 - Cannot collect missed premiums in later paychecks without employee's written consent.



Reporting to Employment Security

- Employers must file a report with the ESD on a quarterly basis.
 - First reporting deadline (Q1 and Q2) was August 31, 2019.
 - ESD is not assessing penalties and interests on late filed report.
 - All other reports must be filed by the last day of the month following the end of the calendar quarter being reported.



Employer Notice Requirements

January 1, 2020

- Workplace poster to be prepared by ESD.
- Notify each eligible employee of PRML rights within five (5) business days after:
 - (1) Seventh (7th) day of absence; or
 - (2) Employer receives notice that employee is absent for covered reason, whichever is later.



Small Employer Assistance

Less than 50 Employees	<ul style="list-style-type: none">• Exempt from employer premium.• No job protection requirements for employees.
150 or Fewer Employees* *Employer must pay the employer portion of premium to be eligible for grants.	<ul style="list-style-type: none">• Eligible for grants up to \$1,000 per employee for significant additional wage-related costs.• Eligible for grants up to \$3,000 per employee if employer hires temporary replacement employee for more than 7 days.• An employer may not receive more than 10 grants per year and only one for each employee on leave.



Existing CBAs– Delayed Premium Obligation

CBA in effect on or before October 19, 2017	<ul style="list-style-type: none">• Represented employees not subject to the rights or responsibilities of PFML until CBA expires or is reopened.• Not required to withhold premiums from these employees or pay the employer share of their premium until the CBA is reopened, renegotiated, or expires.
CBA effective after October 19, 2017	<ul style="list-style-type: none">• Must pay premiums subject to bargaining obligations.• CBA cannot diminish rights or responsibilities under PFML.



Intermittent Leave

- Intermittent leave is permitted. WAC 192-600-005 (2)
 - Weekly benefit is prorated by percentage of hours on leave compared to the number of hours in typical workweek.
 - Minimum claim duration for payment is 8 consecutive hours of leave RCW 50A.15.020(2)(c).



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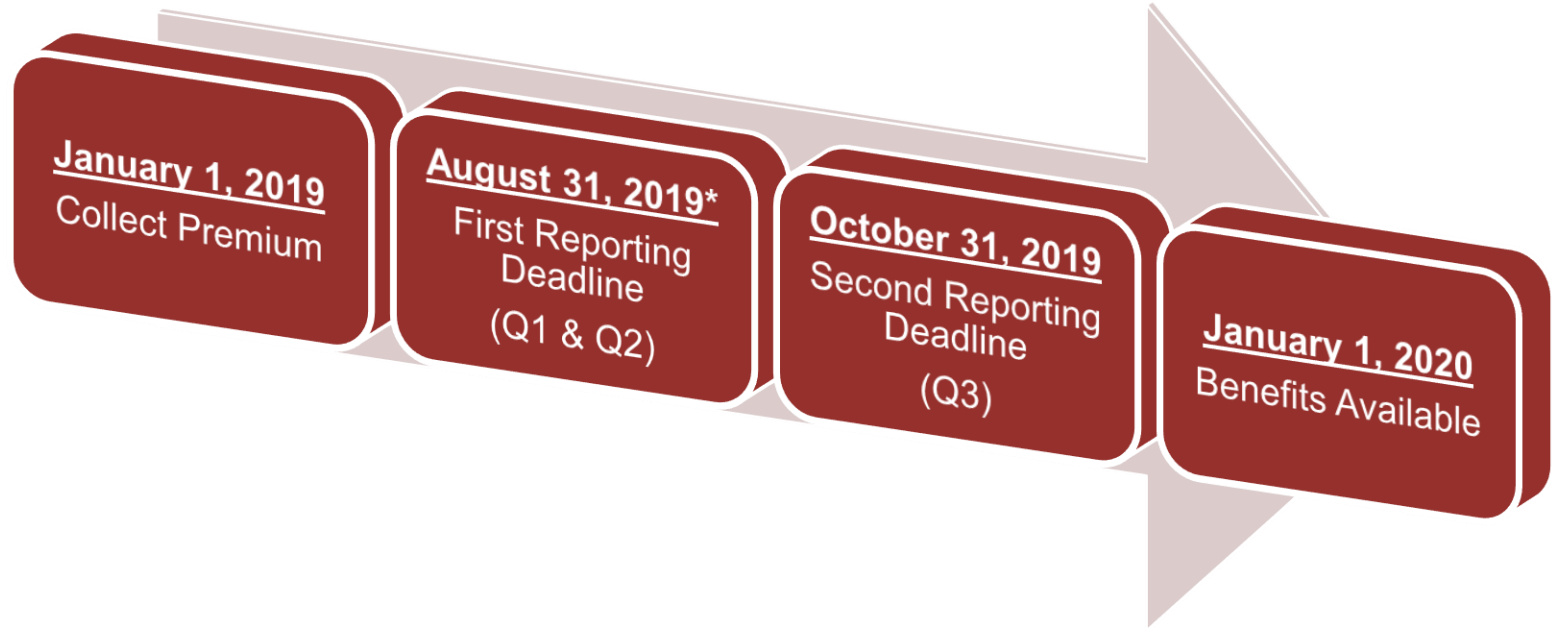


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Voluntary Plans

- Employers may opt-out of PFML by developing a voluntary employer plan approved by ESD for family leave, medical leave, or both.
- Requirements:
 - As good or better than PFML.
 - Available to all employees in workforce.
 - Must report to ESD on a quarterly basis.
 - Must apply every year to ESD for reapproval during the first 3 years.



Interplay with Other Leave Laws

Unemployment Compensation	<ul style="list-style-type: none">• Employee cannot receive unemployment compensation and PFML leave at the same time. (RCW 50A.15.100(2)).
Temporary Pregnancy/Childbirth Disability	<ul style="list-style-type: none">• PFML is in addition to pregnancy/childbirth disability leave (RCW 50A.15.110(1))• TBD: Additional disability leave presumably unpaid.



Unanswered Questions Regarding Interplay with Other Leaves and Benefits

- Awaiting Guidance from ESD
 - Can Employee switch back and forth between PTO and PFML?
 - Is PFML in addition to Short Term or Long Term Disability benefits?
 - Etc.



Ways to Stay Informed:

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- [Employer Webinars](#)
- [News Releases](#)



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Interplay with Other Leave Laws

FMLA	<ul style="list-style-type: none">• PFML leave runs concurrently, unless employer permits otherwise. RCW 50A.15.110<ul style="list-style-type: none">• Designate PFML leave as FMLA leave.• <i>Unclear: Declining FMLA under Escriba.</i>• Employer must pay health insurance benefits only during FMLA leave and only if less than 50 employees.
Workers' Compensation	<ul style="list-style-type: none">• PFML does not run concurrently with leave taken by Employee who is getting time loss benefits. RCW 50A.15.100• Employee cannot receive time loss compensation and PFML leave at the same time. RCW 50A.15.100



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