

Washington Amends its Paid Family and Medical Leave Act

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On March 26, 2020, Governor Jay Inslee signed into law amendments to the Washington Paid Family and Medical Leave Act. The significant changes are as follows:

- Lawsuits
 - The WPFMLA now includes a private right of action in court for an employee claiming interference, retaliation, or discrimination under this law. The limitations period is three years. Class actions are permitted. Damages available include lost wages/salary, benefits, and “other compensation denied or lost” by reason of the violation, reasonable attorney fees and litigation costs.
 - Previously, alleged violations were restricted to administrative adjudication through the Employment Security Department (ESD).
 - An employee may still pursue an administrative complaint with the ESD, but an employee may not pursue both an administrative complaint and a complaint in court simultaneously.
 - An employee is not required to file an administrative complaint with ESD before filing suit in court.
- Supplemental Benefits
 - Previously, the law did not clearly define “supplemental benefits.” Now, the law defines “supplemental benefits” as all payments made by an employer to an employee as salary continuation or as “paid time off.” This includes vacation leave, personal leave, medical leave, sick leave, compensatory leave, or any other paid leave offered by an employer under the employer’s established policy.
 - ESD will not prorate or reduce an employee’s weekly benefit amount due to the receipt of “supplemental benefit payments.”

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- Waiting Period
 - The law previously provided that the “waiting period” was unpaid, leaving unclear whether an employee could receive employer-provided supplemental benefits during that period. The amendments clarify that, yes, an eligible employee may satisfy the waiting period requirement while simultaneously receiving “paid time off” for any part of the waiting period.
 - The amendments eliminated the waiting period for qualifying military exigencies.
 - Coverage
 - The new law expands the definition of “family member” to include a child’s spouse.
 - It also exempts “casual labor” from the coverage of the law. “Casual labor” is defined as work performed infrequently and irregularly, and if performed for an employer, does not promote or advance the employer’s customary trade or business.
 - Workers’ Compensation Disqualification
 - The law previously disqualified from eligibility an employee receiving workers’ compensation, but the amendment limits this disqualification to those employees with permanent total disability or temporary total disability.
 - Conditional Waiver From Eligibility
 - This amendment changes the test for receiving a conditional waiver from WPFML premiums. Previously, the employee would have to be “physically based” outside of Washington in order to qualify for a conditional waiver of premiums for that employee. Now, the question is whether the employee “primarily performs work” outside of Washington.
 - Removes Limitation on Successive Related Periods of WPFML
 - The law formerly provided that successive periods of WPFML caused by the same or related injury or sickness were deemed a single period of family and medical leave only if separated by less than four months. This requirement has been removed.
 - Child Support Obligations
 - The amendments specify the child support obligations that would lead to a WPFML benefit deduction.
 - The new law adds WPFML benefits to the types of payments from ESD that trigger certain obligations for child support-related payroll deductions.
 - Voluntary Plan
 - When a voluntary plan ends or is withdrawn, the employer must pay the ESD all required premiums including any premiums owed that were not covered by the

voluntary plan, if any.

Some of these amendments went into effect immediately, while others will go into effect on June 11, 2020.

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