

WAC 192-700-010 Can an employer deny employment restoration?

(1) An employee is not entitled to (~~employment protection under Title 50A RCW~~) rights under RCW 50A.35.010(1) if:

(a) An employer exercises its right to deny restoration under RCW 50A.35.010 (6)(b) and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or

(b) The employer is able to show that an employee would not otherwise have been employed at the time (~~of reinstatement~~) the employee would return to work after the employee's family or medical leave under Title 50A RCW ends.

(2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

(a) A statement that the employer intends to deny employment restoration when the leave has ended;

(b) The reasons behind the decision to deny restoration;

(c) An explanation that health benefits will still be paid for the duration of the leave; and

(d) The date (~~is~~) on which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration (~~are required to adhere to the~~) under this section must provide continuation of health benefits as required in RCW 50A.35.020 (~~for the remainder of the employee's approved leave~~) and WAC 192-700-020.

NEW SECTION

WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?

(1) An employee taking family or medical leave under Title 50A RCW is entitled to the continuation of health benefits as provided in this section when there is at least one day of concurrent use with leave taken under the federal Family and Medical Leave Act as it existed on October 19, 2017.

(2) When required under subsection (1) of this section, the employee's health benefits must be maintained as if the employee had continued to work from the date family or medical leave under Title 50A RCW commenced until whichever of the following occurs first:

(a) The employee's family or medical leave under Title 50A RCW ends; or

(b) The employee returns from leave to any employment.

(3) If the employer and employee share the cost of existing health benefits, then during any continuation of health benefits as provided in this section, the employee remains responsible for the employee's share of the cost as prescribed by 29 C.F.R. 825.210,

825.211, and 825.212, and any subsequent amendments to those regulations.

(4) Nothing in this section should be construed as restricting an employer from providing a continuation of health benefits for any employee's claim for paid family or medical leave.