NEW SECTION

WAC 192-700-025: How does an employee's use of leave under the federal family and medical leave act (FMLA) affect employment restoration rights?

(1) An employee is entitled to employment restoration upon returning from:

(a) Family or medical leave under Title 50A RCW (PFML), regardless of whether the employee also qualifies for and receives concurrent leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026[FMLA]), as provided under RCW 50A.15.110; or

(b) Leave protected by the FMLA, during a period in which the employee was eligible for benefits under this title but did not apply for and receive those benefits.

(2) An employee is entitled to a combined maximum duration of 16 typical workweeks of leave under subsection (1) of this section taken during a period of 52 consecutive calendar weeks, except this duration is extended to 18 typical workweeks if any of the leave was taken as a result of a serious health condition with a pregnancy resulting in incapacity.

(3) If the employee is approved for a duration of PFML and the associated job protection of such leave would result in a combined duration of job protected leave in excess of the maximum duration described in subsection (2) of this section, an employer may reduce the employee's job protection associated with the duration of PFML by a duration of leave previously taken under FMLA if the FMLA leave was taken no more than 52 weeks prior to the leave taken under PFML to the extent that such a reduction still entitles the employee to the maximum duration of job protection described in subsection (2) of this section.

(4) Employers that choose to offset job protection as described in subsection (1) of this section must provide written notice to the employee, in a language understood by the employee and transmitted by a method reasonably certain to be received promptly by the employee. The notice must include the following:

(a) That the employer is designating and counting the employee's initial use of leave against the employee's entitlement under FMLA, including specifying the amount of the entitlement used and remaining, as estimated by the employer based on information provided by the department and employee;

(b) The start and end dates of the employer's designated 12-month leave year under the FMLA;

(c) Since the employee is eligible for paid family or medical leave under this title but is not applying for and receiving benefits, that the employer is counting the FMLA leave toward the maximum periods of job protection associated with leave taken under PFML, including specifying the start and end dates of FMLA leave, and the total amount of FMLA leave counting toward those maximum periods, as estimated by the employer based on information provided by the department and employee; and

(d) That the use of FMLA leave counting against job protection associated with PFML does not affect the employee's eligibility for paid family or medical leave benefits under this title.

(5) The notice described in subsection (2) of this section must be delivered within five business days of the employee requesting or taking FMLA leave and at least monthly thereafter.

(a) The requirement to provide this notice will cease if:

i. The employer has applied the maximum amount of FMLA leave to an employee's PFML job protection; or

ii. The employer does not wish to retain the option to reduce PFML job protected leave by FMLA job protected leave.

(b) The notice requirement resumes if the employee takes additional FMLA leave and the employer chooses to apply that leave to reduce job protection under PFML as described in this section.

(6) An employer that does not comply with the notice requirements in this section is required to recognize an employee's full employment restoration rights under PFML regardless of any prior use of leave under FMLA.

(7) An employer may apply FMLA leave toward an employee's job protection under PFML regardless of whether leave taken under either program is intermittent or for different qualifying events.

(8) Any investigation of a complaint filed by an employee under RCW 50A.40.020 that includes an alleged violation of this section will be based on information the employer had or reasonably should have had when the employer allegedly committed the unlawful act.

(9) Nothing in this section prevents an employer from adopting more generous leave or job protection not covered by Title 50A RCW.

Example 1: An employee takes six weeks of leave under FMLA but does not receive benefits under PFML for the same period. The employer wishes to retain the right to apply these six weeks of FMLA leave toward a potential future use of paid family or medical leave that would result in a combined maximum of more than 16 weeks of leave. Leave is not being taken as a result of a serious health condition with a pregnancy resulting in incapacity. The employer provides the proper notice and continues to do so monthly. Six months later, the employee is approved for 12 weeks of paid family leave to bond with a new child in the home. The employer notifies the employee that their previous use of FMLA within the last 52 weeks is being applied to job protection associated with their paid family leave. Because the combined total of job protection would amount to 18 weeks, the employee would need to return to work after the tenth week of paid family leave to retain job protection rights. This would result in a maximum of 16 weeks of job protection. If the employee elects to remain on paid family leave after the tenth week, they will still be eligible for PFML benefits, but the employer would not be required to offer the same or a substantially similar position of employment when the employee returns to work.

Example 2: An employee takes four weeks of leave under FMLA, but does not receive paid family or medical leave benefits for the same period. The employee begins their FMLA leave on March 12, 2026 and returns to work on April 10, 2026. The employer wishes to retain the right to apply these four weeks of FMLA leave toward a potential future use of paid family or medical leave. The employer provides the proper notice and continues to do so monthly. On April 2, 2027, the employee elects to take 16 weeks of paid family and medical leave after giving birth to a child. The employer notifies the employee that their previous use of FMLA within the last 12 months is being applied to job protection associated with their paid family leave. The employer is only able to apply one week of previously used FMLA leave toward the employee's paid medical leave job protection because the additional FMLA leave occurred more than one year prior to the employee's use of paid medical leave.

NEW SECTION

WAC 192-700-030: Do employers need to provide a notice to employees regarding their employment restoration rights?

(1) Employers are required to provide a notice to employees eligible for employment restoration rights as described in RCW 50A.35.010(7)(b).
(2) Employers must provide this notice:
    (a) Each time an employee takes or is expected to take a continuous period of leave that lasts at least two typical workweeks; or
    (b) One time for each qualifying event if the employee takes or is expected to take combined intermittent periods of leave exceeding 14 typical work days for that qualifying event. In this case, an employer may use an approximate date rather than a precise date for the employee's first scheduled workday after the leave ends.

    Example: An employee applies for and receives paid medical leave benefits on an intermittent basis, taking every Monday off for treatment over an extended period of time. After the 14th Monday, an employer is required to provide the notice. The employer may provide a single notice for this qualifying event, and the notice may list "the day after you have received your treatment" as the expected time for the employee's return to work.

(3) The notice described in this section must be delivered in a language understood by the employee and transmitted by a method reasonably certain to be received by the employee no later than:
    (a) Five business days in advance of the date the employee is expected to return to work; or
    (b) If the employer becomes aware of the employee's use of paid family or medical leave less than five business days in advance of the date the employee is expected to return to work, as soon as is practicable.
(4) Any investigation of a complaint filed by an employee under RCW 50A.40.020 that includes an alleged violation of this section will be based on information the employer had or reasonably should have had when the employer allegedly committed the unlawful act.