

NEW SECTION

WAC 192-700-008 What is the time frame in which an employer may apply federal family and medical leave (FMLA) to a period of paid family and medical leave (PFML) job protection? (1) If 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)), is not taken, or if a PFML claim year is in effect when a duration of FMLA leave is taken that the employer designates as counting against a future duration of PFML job protection, the "52 consecutive calendar weeks" as referenced in RCW 50A.35.010 means the employee's PFML claim year.

(2) If a PFML claim year is not in effect when a duration of FMLA leave is taken that the employer designates as counting against a future duration of PFML job protection, the "52 consecutive calendar weeks" as referenced in RCW 50A.35.010 means a 52-week period beginning with the first day of such FMLA leave. In such cases, an employee is entitled to a maximum of a combined total of 16 times the typical workweek hours of job protection in the 52-week period. The maximum duration is extended to 18 times the typical workweek hours if the employee took leave due to a serious health condition with a pregnancy that results in incapacity.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-700-015 How is employer size determined for employment protection? (1) Employment protection ((applies to employees who work for an employer with fifty or more employees in employment)) is available to employees as provided in RCW 50A.35.010.

(2) For the purpose of ((employment protection)) RCW 50A.35.010 (6)(a)(i), employers are considered to have ((fifty or more)) the required number of employees when:

(a) The employer has ((fifty or more)) the required number of employees ((working)) or more employed each work day for ((twenty)) 20 or more calendar workweeks; and

(b) The ((twenty)) 20 calendar workweeks occur in the current calendar year or occurred in the preceding calendar year.

(3) For the purposes of this section, any employee whose name appears on the employer's payroll will be considered employed. Employees on paid or unpaid leave, including leave taken under Title 50A RCW, leave taken under the federal Family and Medical Leave Act, leaves of absence, disciplinary suspension, etc., are counted as long as the employer has a reasonable expectation that the employee will later return to active employment. If there is no employer/employee relationship (as when an employee is laid off, whether temporarily or permanently) such individual is not counted.

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))~~ RCW 50A.35.020.

(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) If an employee gives the employer unequivocal notice of intent not to return to work, the employer's obligations under Title 50A RCW to maintain health benefits cease.

(5) 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.

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 described in WAC 192-700-008, 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 de-

scribed 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 (3) 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 (4) 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 to-

ward 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 10th 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 10th 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.

(10) For the purposes of this section, any reference to leave taken under the federal Family and Medical Leave Act applies regardless of whether the employee received payment in the form of employer paid time off, from a short-term disability benefit plan, or from any other source during such 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 under Title 50A RCW 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 under Title 50A RCW 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.