PREPARE TO BE THERE FOR CARE
WASHINGTON’S NEW PAID FAMILY & MEDICAL LEAVE PROGRAM
EMPLOYER TOOLKIT
Content

About this toolkit ............................................................................................................................................................ 3

UPDATE SCHEDULE ................................................................................................................................... 3
  Stay informed and get involved ............................................................................................................ 3

About the program ........................................................................................................................................................ 4
  Updated reporting timeline .................................................................................................................. 5
  Employer responsibilities ...................................................................................................................... 6
  Small business employer responsibilities ............................................................................................. 9
  Premiums ............................................................................................................................................ 10
  Reporting ............................................................................................................................................ 14
  About the benefit ................................................................................................................................ 16

Sample employee communications ...................................................................................................................... 17
  Sample employee handbook materials .............................................................................................. 17
  Sample text for a workplace blog, newsletter or employee email ..................................................... 18

Employee paystub insert ........................................................................................................................................... 20

Document change log ................................................................................................................................................ 21
About this toolkit

This toolkit is intended to help anyone with employees in Washington know how to prepare for this new program and to help you inform your employees about what to expect.

Some program details are still under development and this toolkit will be updated to reflect the most current information available. Our anticipated update schedule is below, however dates are subject to change based on program development and rulemaking.

UPDATE SCHEDULE
Version 1.1: October 25, 2018
Version 2.1: November 14, 2018
Version 3.1: December 6, 2018
Version 4.1: March 18, 2019
Version 5.1: July 1, 2019
Version 6.1: August 13, 2019

We are committed to giving you accurate information and the best tools we have as soon as they are available. Please go to paidleave.wa.gov for updates and check the file name in the footer of this document to make sure you’re looking at the most current version.

Stay informed and get involved

1. Explore our website (paidleave.wa.gov).
2. Connect with us. Sign up for our listserv (bit.ly/paidleavelist) and follow us on social media (@PaidLeaveWA on Facebook, Twitter and Instagram).
3. Get involved in rulemaking; it will be ongoing through 2019. Details at paidleave.wa.gov/rulemaking.
About the program

We know that the most important things in life happen outside the workday. People we care about become ill. Families welcome new members. Big moments that require extra attention come along for all of us.

Support in these times means we can be stronger both at home and at work. Paid Family and Medical Leave is an essential benefit that strengthens companies by ensuring every employee can take paid time for care when needed. This new statewide insurance program will make Washington an even better place to live, work and do business.

In 2020, our program will be the strongest in the nation and a model for other states looking to implement this benefit.

*To build the program, requirements for employers began on Jan. 1, 2019.*
Updated reporting timeline

Employers will report and remit premiums for quarters one (Q1) and two (Q2) between July 1 and August 31. Employment Security has extended the deadline from the previously stated July 31 to allow employers enough time to set up their accounts, file reports and pay premiums. This change is for 2019 only.

- You will file two separate reports—one for each quarter. For more on reporting, see page 15.
- There will be no fines or penalties for reporting and remitting Q1 or Q2 by August 31, 2019.
- This change does not affect how we will calculate your business’s size. For more on calculating business size, see page 10.
- For more information, visit paidleave.wa.gov/reporting.
Employer responsibilities

Which employers and employees does this involve?

Almost every Washington employer must participate in this program, and almost every Washington employee will be eligible to receive benefits. This includes businesses of all sizes and non-profits, charities and faith organizations. If you are a public or private business with even one employee in Washington, you'll very likely be a part of Paid Family and Medical Leave.

Exceptions are:
- Federally recognized tribes (may opt in; see paidleave.wa.gov/elective-coverage)
- Federal employees
- Self-employed individuals (may opt in; see paidleave.wa.gov/elective-coverage)
- Some employees subject to collective bargaining agreements (see below)

How is the program funded?

A shared premium of 0.4 percent of employee wages will fund the program (learn more on page 10).

What do employers need to do?

Starting in 2019, employers must:

- Report employee wages, hours, and more to ESD (learn more on page 14).
- Collect premiums from employee paychecks and remit them to the Employment Security Department.
- Provide notice of this program to employees (required poster coming in late 2019).

Self-employed individuals and federally recognized tribes are not required to participate in Paid Family and Medical Leave but may opt in to the program to receive access to benefits. Get more information about elective coverage at paidleave.wa.gov/elective-coverage.

How do existing collective bargaining agreements figure in?

Nothing in the Paid Family and Medical Leave law requires any party to a collective bargaining agreement (CBA) in existence on October 19, 2017, to reopen negotiations of the agreement or to apply any of the rights and responsibilities under the law unless and until the existing agreement is reopened or renegotiated by the parties or expires. This is outlined in RCW 50A.04.235 and is covered in further detail in WAC 192-520-010.

How does Paid Family and Medical Leave work for employees covered by a CBA?

If you have employees covered by a collective bargaining agreement that was in effect before Oct. 19, 2017, unless and until the agreement expires, is reopened, or renegotiated:
• Do not withhold premiums from these employees.
• Do not pay the employer share of the premium for these employees.
• Do not include these employees on your quarterly reports.

What happens when the CBA is reopened, renegotiated, or expires?

You must inform us immediately upon the reopening, renegotiation, or expiration of a CBA that was in effect prior to Oct. 19, 2017, and:

• Either begin withholding premiums from covered employees or choose to pay some or all of the premium on their behalf.
• Begin including covered employees in your quarterly report.

However, for the purposes of Paid Family and Medical Leave, only CBAs that have been renegotiated in their entirety meet the definition of reopened, renegotiated, or expired; A memorandum of understanding (MOU) covering a narrow or specific section of a CBA does not constitute a reopening or renegotiation.

For example, MOUs to accommodate the new paid sick leave law are not considered a reopening or renegotiation. This includes MOUs to expand the collectively bargained definition of family, accrual rates, and reasons for usage under the new paid sick leave law. Negotiations of future contracts do not constitute a reopening or renegotiation either.

For more information on CBAs, including what to do when some of your employees are covered and others aren’t, and details on whether your CBA covered employees are eligible to take leave, visit paidleave.wa.gov/employers.

Can I opt out?

Starting Jan. 1, 2020, all eligible employees in Washington must have access to paid family and medical leave benefits either through the state program or an employer-funded program. Employer-funded programs are called voluntary plans and may be provided for family leave, medical leave or both. The benefits offered to employees under a voluntary plan must meet or exceed the benefits of the state plan. To get more information about voluntary plans and whether it is right for your business, download the voluntary plan guide at paidleave.wa.gov/voluntary-plans.

The voluntary plan application is available at paidleave.wa.gov/voluntary-plan-application.

How does Paid Family and Medical Leave work with FMLA?

Rules about the interaction of Paid Family and Medical Leave and other leave programs, including FMLA, will be developed during phase five of our public rulemaking process. Phase five began in January 2019 and concludes in August 2019, with rules going into effect in September. Find out more at paidleave.wa.gov/rulemaking.
What is the difference between Paid Family and Medical Leave and FMLA?

Paid Family and Medical Leave is a state program. The Family and Medical Leave Act (FMLA) is a federal program. In short, Paid Family and Medical Leave does not replace FMLA.

While there are some similarities between the programs, there are also notable differences such as:

- The state program (Paid Family and Medical Leave) provides paid leave. FMLA is unpaid leave.
- Paid Family and Medical Leave is based on typical workweek hours, not to exceed 12 times the typical workweek hours during the claim year. An employee may take up to 12 workweeks of leave with FMLA.
- Paid Family and Medical Leave includes grandchildren, grandparents and siblings as qualifying family members, in addition to spouses, children and parents.
- Paid Family and Medical Leave is funded through premiums paid by employers and workers.
- There is no 75-mile radius component to Paid Family and Medical Leave job protection.

Businesses with fewer than 50 employees do not have requirements under FMLA, but they must collect and remit employee premiums and complete required reporting for Paid Family and Medical Leave.
Small business employer responsibilities

Unlike the federal unpaid Family and Medical Leave Act (FMLA), small businesses are required to participate in this program. However, there is financial help for small business built into the program:

1. **Businesses with fewer than 50 employees are exempt from the employer portion of the premium.** Employees at small businesses pay 63.333 percent of the total premium, just like employees at large businesses, but their employers are not assessed the employer portion. Employers must still remit the employee portion of the premium, and the employees are fully eligible to receive paid leave. Small business employers may withhold the employee share of the premium or opt to cover that premium as an added benefit.

2. **Small business assistance grants are available to employers with 150 or fewer employees.** These grants provide up to $3,000 to help cover costs associated with employees on leave. An employer may apply for up to 10 of these grants each year, with one per employee on leave. Employers with fewer than 50 employees that choose to pay the employer portion of the premium can also be eligible for these grants.

How is business size calculated?

ESD will calculate your business’s size on an annual basis Sept. 30 of each year. It is based on your average employee headcount over the previous four quarters as reflected in the reports you submit to ESD. It is not calculated by FTE positions.

**For 2019 only:**

ESD will determine the size of your business based on your first quarter report (January – March), and this is the number ESD will use for 2019.

On Sept. 30, 2019, ESD will average the number of employees reported over the previous quarters to determine business size for calendar year 2020.

You won’t receive ESD’s calculation of your business’s size until we receive your first quarterly report in July or August 2019. However, tracking the headcount of your employees for the first quarter of 2019 will give you the best indication of whether you will need to pay the employer portion of the premium in July/August.
Premiums

Employers start collecting premiums for Paid Family and Medical Leave on Jan. 1, 2019. For 2019, the premium is 0.4 percent of each employee’s gross wages, minus tips. Detailed information on calculating premiums, including a calculator you can use to estimate your premiums, is available on our website at paidleave.wa.gov/premiums.

What are gross wages?

In Paid Family and Medical Leave, wages are generally referred to as gross wages without tips. Wages are defined in statute (RCW 50A.04.010) as the remuneration paid by an employer to an employee (up to the Social Security cap for premium assessment).

Premium assessments must include gross wages such as:

- Salary or hourly wages
- Cash value of goods or services given in the place of money
- Commissions or piecework
- Bonuses
- Cash value of gifts or prizes
- Cash value of meals and lodging when given as compensation
- Holiday pay
- Paid time off (vacation, sick leave, associated cash outs)
- Bereavement leave
- Separation pay such as severance pay, termination pay, or wages in lieu of notice
- Value of stocks at the time of transfer to the employee (if part of a compensation package)
- Compensation for use of specialty equipment, performance of special duties or working particular shifts
- Stipends and per diems (unless provided to cover a past or future cost incurred by the worker as a result of the worker’s expected job functions)

Wages may not include:

- Supplemental benefit payments
- Payments provided to cover a past or future cost incurred by the worker as a result of the worker’s expected job functions
- Payment into retirement or disability plans

How should the employer report hours worked?

Employers must report the number of hours each employee works each quarter, rounded up to the nearest whole number. Details are posted in the draft rules for each phase at paidleave.wa.gov/rulemaking.

Generally, hours worked should include:
• **Hourly employees.** Report the total number of hours worked by each employee.
• **Employees on salary.** Report 40 hours for each week in which a full-time salaried employee worked.
• **Vacation pay, sick leave pay, paid time off.** Report the number of hours an employee is on paid leave. Do not report hours for a cash-out of leave.
• **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.
• **Wages in lieu of notice.** Report the actual number of hours for which an employee was paid.
• **Severance pay.** Do not report hours for severance pay.
• **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.
• **On-call and standby hours.**
  o Report the number of actual hours for which an employee receives wages for being on call or on standby with the employer. Do not report hours for which an employee is scheduled to check in before work, and if not required to work, has no further obligations.
  o For the purpose of this section, "on-call" and "standby" hours are defined as paid hours when employees must comply with employer requirements, such as maintaining physical or mental status, remaining in a specified location, or being required to report to work within a specific time frame.

Specific details for faculty, piecework or commissioned employees, practice and rehearsal time, and more are posted at paidleave.wa.gov/reporting.

**How do I calculate premiums?**

Businesses of all sizes calculate premiums using the same formula.
All employers, regardless of size, are responsible for remitting the employee share of the premium to ESD on a quarterly basis. You can choose to withhold the entire 63.33 percent from your employee’s paycheck, or you can cover all or some of the premium on your employee’s behalf.

**Important details:**

- If you are using a voluntary plan for family or medical leave, your calculations may be different. Visit paidleave.wa.gov/voluntary-plans for more.
- Premium withholdings are capped at the Social Security cap, which is updated annually. It is $132,900 for 2019.

I am a small business owner. How much do my employees pay?

Businesses of all sizes calculate premiums the same way and you may collect up to 63.33 percent of the total premium from your employees in paycheck withholdings.

- **If you have fewer than 50 employees,** you will only be assessed the employee portion of the premium. As of Jan. 1, 2019, you must withhold that portion of the premium from your employees or opt to cover that portion yourself. If you do not withhold that portion from your employees’ paychecks, you will be responsible for paying it yourself. Premiums should be withheld from each paycheck. Employers cannot collect missed premiums in later pay periods.

- **If you have 50 or more employees,** you will be assessed both the employee and employer portions of the total premium. If you do not withhold the employee portion from paychecks, you will be responsible for paying both portions yourself. Premiums should
be withheld from each paycheck. Employers cannot collect missed premiums in later pay periods.

What if I didn’t start withholding premiums Jan. 1, 2019?

If you did not start collecting premiums from employees on Jan. 1, there is no penalty and you can begin withholding at any time provided you give your employees notice one pay period in advance. However, you cannot retroactively withhold premiums from employees, and you will be responsible for paying any missed premiums on their behalf. You should remit your premiums to the Employment Security Department in July or August of 2019 when your quarterly reports are due.
Reporting

For 2019 only, submit your reports for both the first and second quarter by August 31.

Reporting fields:

- UBI number
- Business name
- Total premiums collected from employees
- Name of the report preparer

Then, for each employee:

- SSN or ITIN
- Last name
- First name
- Middle initial
- Wages paid in the reporting quarter and associated hours

Reporting periods follow calendar quarters and are aligned with the reporting periods for Unemployment Insurance (UI). However, this report is separate from UI and the two cannot be reported together. Please note: The quarterly reports referenced in WAC 192-540-030 must be submitted by the last day of the month following the end of the calendar quarter being reported. If a reporting date falls on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day.

<table>
<thead>
<tr>
<th>Reporting quarter</th>
<th>Report due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1: January, February, March</td>
<td>April 30*</td>
</tr>
<tr>
<td>Q2: April, May, June</td>
<td>July 31*</td>
</tr>
<tr>
<td>Q3: July, August, September</td>
<td>October 31</td>
</tr>
<tr>
<td>Q4: October, November, December</td>
<td>January 31</td>
</tr>
</tbody>
</table>

*for 2019 only, your Q1 and Q2 reports will be due August 31.

Reporting process

Starting July 1, 2019, employers will file reports and pay premiums online with a new Paid Leave account.
Like most Washington state agencies, Paid Family and Medical Leave uses SecureAccess Washington (SAW) to manage access to customer accounts. You will need an active SAW account to log-in to Paid Family and Medical Leave and establish your account. If you do not have a SAW account, create one at secureaccess.wa.gov.

Visit paidleave.wa.gov/reporting for how-to videos and more information about setting up an account and filing reports.

We will offer two reporting methods:

1. **Manual filing.** You will manually enter the name, SSN or ITIN, hours worked and wages paid separately for each employee. You can do this for up to 50 employees.
2. **Single filing.** You will compile the name, SSN or ITIN, hours worked and wages paid of each employee into a single CSV file (like an Excel spreadsheet). Instructions for creating a CSV file and the required file specifications are posted on our website at paidleave.wa.gov/reporting.

Additionally, employer agents (like payroll companies, CPAs and other third-party administrators) can report using an ICESA file. This is the method you will use if you need to report for multiple UBI numbers in a single report. More information on the ICESA format, including a test site where employer agents can test their ICESA files, is on our website at paidleave.wa.gov/bulk-filing.
About the benefit

Paid Family and Medical Leave typically allows employees to take up to 12 weeks, as needed, if they:

- Welcome a child into their family (through birth, adoption or foster placement).
- Experience a serious illness or injury.
- Need to care for a seriously ill or injured relative.
- Need time to prepare for a family member’s pre- and post-deployment activities, as well as time for childcare issues related to a family member’s military deployment.

If employees face multiple events in a year, they may be eligible to receive up to 16 weeks, and up to 18 weeks if they experience a serious health condition during pregnancy that results in incapacity.
Sample employee communications

Employers, HR or payroll are the first place most people will go when they notice new deductions from their paycheck. To help assist you in informing your employees of this new program, we’ve provided sample communications for you to share with your employees, including:

- Sample employee handbook materials
- Sample text for a blog, newsletter or email
- Sample paystub insert/attachment

Note: These materials are not offered, nor should they be construed, as legal advice. It is strongly advised that you have your company attorney review the draft before preparing your final copy.

Under the law, you are required to inform your employees about their rights under Paid Family and Medical Leave by posting a notice in a place customarily used to post other employment-related notices. This notice will be made available to you before January 2020.

Sample employee handbook materials

Paid Family and Medical Leave overview

Paid Family and Medical Leave is a mandatory statewide insurance program that will provide almost every Washington employee with paid time off to give or receive care.

If you qualify, this program will allow you to take up to 12 weeks, as needed, if you:

- Welcome a child into your family (through birth, adoption or foster placement)
- Experience a serious illness or injury
- Need to care for a seriously ill or injured relative
- Need time to prepare for a family member’s pre- and post-deployment activities, as well as time for childcare issues related to a family member’s military deployment. For specifics on military-connected paid leave, visit www.dol.gov/whd/regs/compliance/whdfs28mc.pdf

If you face multiple events in a year, you might be eligible to receive up to 16 weeks, and up to 18 weeks if you experience a serious health condition during pregnancy that results in incapacity.

Payment of premiums

The program is funded by premiums paid by both employees and employers. It will be administered by the Employment Security Department (ESD).

Premium collection started on Jan. 1, 2019. In 2019, the premium is 0.4 percent of wages. Employers can either pay the full premium or withhold a portion of the premium from their
employees. Employers who choose to withhold premiums from their employees may withhold up to about 63 percent of the total premium, or $2.44 per week for an employee making $50,000 annually. The employer is responsible for paying the other 37 percent. Businesses with fewer than 50 employees are exempt from the employer portion of the premium but must still collect or opt to pay the employee portion of the premium.

Premium collection began Jan. 1, 2019. Your employer will calculate and withhold premiums from your paycheck and send both your share and theirs to ESD on a quarterly basis.

**Taking leave**

Starting Jan. 1, 2020, employees who have worked 820 hours in the qualifying period (equal to 16 hours a week for a year) will be able to apply to take paid medical leave or paid family leave. The 820 hours are cumulative, regardless of the number of employers or jobs someone has during a year. All paid work over the course of the year counts toward the 820 hours, including part-time, seasonal and temporary work.

While on leave, you are entitled to partial wage replacement. That means you will receive a portion of your average weekly pay. The benefit is generally up to 90 percent of your weekly wage, with a minimum of $100 per week and a maximum of $1,000 per week. You will be paid by the Employment Security Department rather than your employer.

Unlike the federal Family and Medical Leave Act (FMLA), employees of small businesses may take Paid Family and Medical Leave if they meet the standard eligibility requirements.

More information on applying for benefits will come in 2019. Please go to [paidleave.wa.gov](http://paidleave.wa.gov) for more information.

**What protections are there for me?**

Employees who return from leave under this law will be restored to a same or equivalent job if they work for an employer with 50 or more employees, have worked for this employer for at least 12 months, and have worked 1,250 hours in the 12 months before taking leave (about 24 hours per week, on average).

You can keep your health insurance while on leave. If you contribute to the cost of your health insurance, you must continue to pay your portion of the premium cost while on leave.

Your employer is prohibited from discriminating or retaliating against you for requesting or taking paid leave.

**Sample text for a workplace blog, newsletter or employee email**

Starting in 2020, Washington will be the fifth state in the nation to offer paid family and medical leave benefits. This benefit offers partially paid leave to care for yourself or a loved one in times
of serious illness or injury, to bond with a new child joining your home through birth, adoption or foster placement and for certain military-connected events if you have a family member in active duty service.

As a worker in Washington, you will experience a few changes in 2019. In your first paycheck of 2019, you might have noticed a new deduction. For example, if your gross wages are $50,000 per year, you may pay up to about $2.44 per week. Employers contribute to this program too, so we’re in this together.

In 2020, you will be able to apply for leave when you experience a qualifying event and have worked 820 hours (about 16 hours a week, on average) in the year leading up to your date of leave.

This isn’t like paid sick leave; you will file your claim with the Employment Security Department (ESD), and your payment will come from ESD. You can learn more at paidleave.wa.gov/workers.

Do you have questions? Ask your HR representative or ask your questions directly to the Paid Family and Medical Leave program at paidleave@esd.wa.gov. You can also find them on Twitter, Instagram and Facebook @PaidLeaveWA.
If you choose to deduct premiums from your employee’s paycheck, you may want to share the paystub insert with them to explain the new withholding.

Visit paidleave.wa.gov/paystub to download the full-page English and Spanish versions, as well as additional translations in:

- Arabic
- Chinese
- Japanese
- Khmer
- Korean
- Laotian
- Punjabi
- Russian
- Somali
- Tagalog
- Ukrainian
- Vietnamese
Document change log

November 14, 2018
- Updated employer reporting requirements and deadlines (p 9)
- Updated Social Security cap for 2019 (p 9)

November 19, 2018
- Updated timeline for ESD’s release of the required employee notification poster (p 12)

December 5, 2018
- Updated description of calculating business size (p 6)
- Updated definition of gross wages (p 8)
- Expanded the explanation of calculating premiums (p 9 and 10)

December 11, 2018
- Removed stipends and per diem from the definition of gross wages (p 8)

March 22, 2019
- Updated reporting deadlines (p 5 and 11)
- Expanded details about report filing options and formats (p 12)
- Added small business section (p 8)

July 1, 2019
- Updated information about CBAs (p 6)
- Expanded description of wages and hours (p 11, 12 and 13)
- Added information about reporting process resources (p 16)

August 13, 2019
- Added information to the reporting periods chart (p 14)