Washington Expands PFML Protections

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Washington's Paid Family and Medical Leave ("WA PFML") program, administered by the Employee Security Department ("ESD"), provides partial wage replacement benefits to employees on leave for certain family and medical reasons. With the passage of HB 1213, various WA PFML employee protections will be expanded effective January 1, 2026.

Background

Effective January 1, 2020, all employers with at least one (1) employee performing services in Washington must provide paid family and medical leave benefits through the state insurance fund or an approved voluntary plan. WA PFML benefits are funded by premiums paid by employer and employee contributions. Employees may receive wage replacement benefits of up to 90% of weekly wages up to the maximum. Employers are also required to report employee wages and hours when premiums are remitted to ESD.

Employees are eligible for leave benefits if they worked at least 820 hours for any WA employer during a qualifying year. Employees may be eligible for up to 12 weeks of medical or family leave. WA PFML leave can run concurrently with the federal Family and Medical Leave Act ("FMLA"). Based on employer size and depending on their eligibility, employees may be entitled to job protection and benefits continuation during their period of leave.

HB 1213

On May 17, 2025, HB 1213 was signed into law. HB 1213 expands several employee benefits and protections under WA PFML. The changes become effective January 1, 2026.

Notable changes follow.

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Minimum leave increments

The minimum leave increment is reduced from eight (8) to four (4) hours.

Significant changes to job protection provisions

- Smaller employers will be required to provide job protection to employees taking WA PFML as follows:
    - 25 or more employees from January 1, 2026 to December 31, 2026
    - 15 or more employees from January 1, 2027 to December 31, 2027
    - Eight (8) or more employees on or after January 1, 2028
- The minimum hours worked for employees to qualify for job protection is removed
- Benefits continuation is now required during any leave when an employee is eligible for job protection

Leave stacking

Currently, employees can "stack" FMLA and WA PFML leave by claiming leave under FMLA first without applying for leave under WA PFML. Stacking makes it possible for an employee to take 12 weeks of leave under FMLA and then the full amount of available WA PFML, potentially providing an employee with up to 30 weeks of protected leave.

HB 1213 now provides a maximum period of job protection of 16 weeks in a 52-week period when an employee takes FMLA that is also eligible for WA PFML. The maximum job protection period requires the employer to provide notice to the employee containing the following information:

- That the FMLA leave is counting against any period of job protection under WA PFML
- That the use of unpaid FMLA leave does not affect the employee's eligibility for benefits under WA PFML

The maximum period of job protection that is available to an employee requires the employee to exercise their right to restoration of employment by the earlier of:

- First scheduled workday following the period of leave; or
- First scheduled workday following a continuous or intermittent period of 16 weeks.

This means an employee's job protection expires after the 16-week period even if the employee is still off work on approved WA PFML, making it possible for the employer to avoid job restoration and discontinue benefits continuation. Employers should be sure to confirm whether an employee in this situation should be offered COBRA.

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Small employer grants

HB 1213 also changes the grants available to assist small employers with costs related to WA PFML

- Only employers with 50 to 150 employees will be eligible for existing grants
- A new $3,000 grant is available to employers with fewer than 50 employees that can be used for:
    - Costs related to hiring a temporary worker for more than seven (7) days; or
    - Significant additional wage related costs due to an employee's leave
- Any employer receiving a grant will be assessed for all premiums for three (3) years

Employer Action

Employers will need to become familiar with the additional rights and responsibilities imposed by HB 1213. While the changes related to employee leave stacking are welcomed, employers should update existing leave policies to account for the changes related to job protection and benefit continuation. Additionally, employers should consider updating leave and benefit continuation policies to account for possible required COBRA continuation coverage offered during WA PFML leave. Employers will likely need to confirm processes with COBRA administrators to ensure compliance.

ESD may provide sample notices that can be used to satisfy the notice obligation that allows an employer to limit the maximum period of job protection and benefit continuation.

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