

Ryan Swanson's 34th Annual Employment Law Webinar



Frequently Asked Questions from HR Personnel on Washington and Federal Leave Laws

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What types of leave are available to employees?



- Medical leave
- Family leave
- Domestic violence leave
- Workers' compensation
- Short- or long-term disability
- Military leave
- Personal leave
- Other (bereavement, jury duty, etc.)

Universe of Leave Laws

- Federal leave laws
- State leave laws
- City/County leave laws
- Employer provided leave
 - policies, handbook, agreement



What laws address employee leave?

- Americans with Disabilities Act (ADA)
- Family and Medical Leave Act (FMLA)
- Washington Paid Family and Medical Leave Act (WA PFML)
- Healthy Starts Act
- Paid Sick and Safe Leave
- WA Family Care Act
- Domestic Violence Leave
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- WA Military Family Leave Act
- Volunteer Emergency Services Personnel
- Washington Law Against Discrimination (WLAD)
- Workers' Compensation

Which law applies?

- Check federal and state and local laws
- State laws where employee works
- Law most beneficial to the employee
- Can be more than one law
- Can be concurrent or consecutive



Does a company need to allow additional leave if employee has exhausted or is not eligible for WA PFML/FMLA leave?

- Maybe... may need to offer leave under other laws, such as the ADA or company policies
- Leave can be long, but not required to be indefinite or forever
- For ADA, leave is not a “reasonable accommodation” if an “undue hardship” → high threshold

Is employee entitled to reinstatement after WA PFML leave?

- Yes if the employer/employee meet FMLA requirements
 - company has 50+ employees
 - employee has worked for company for at least a year
 - Employee worked at least 1250 hours in prior year
- No if the above is not met
- No if employee is salaried and among highest 10% paid employees in 75 miles
- No if job would not exist upon return



During WA PFML leave, what happens with employee benefits?

- Must keep an employee's benefits if one day of overlap with FMLA leave
- May keep benefits if company elects to do so even if no overlap with FMLA leave
- May continue to require employee to pay their share of premiums while on leave

Are employees entitled to bereavement leave?

- Yes under WA PFML amendment (effective 6/9/22): can use PFML during the 7 calendar days after death of child (if child was someone employee would have qualified for medical leave for birth or family leave to bond following birth/placement)
- Yes if in employee handbook/policy – may be more generous

How does leave work for pregnant employees?



- SO MANY LAWS!
 - FMLA, WA PFML, Healthy Starts Act, WLAD, WFCOA, WA Paid Sick Leave
- Under WA PFML, may be up to 18 weeks leave
 - up to 12 weeks medical and 12 weeks bonding, combined total of 16 weeks but up to 18 weeks if serious, incapacitating health issue related to pregnancy
 - Post-natal leave for parent giving birth is now presumptively medical leave for 6 weeks after birth, no documentation required

How does leave work for pregnant employees? (con't.)



- Job protection for entire length of disability due to pregnancy
- Adoptive/parental leave = up to 12 weeks
- Also check employer leave policies

<https://lni.wa.gov/workers-rights/leave/pregnancy-parental-leave>

Can the employer require documentation from a medical provider?

- Generally yes, employer can require employee to provide medical certification of a medical issue, need for leave/accommodation, etc.
- For WA sick/safe leave, can only require documentation if absent more than 3 consecutive days
- Can request employee provide medical release for provider to release records directly, but cannot require it
- Employer can also request fitness-for-duty certification upon return to work

No leave law applies, so can leave be denied?

- Check employee handbook/policies
- Companies often allow “leave of absence” in certain circumstances
- Also, employee may use PTO/personal leave
- Treat employees in similar circumstances the same



Thank you.

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