

Q&A –State Human Resources

Paid Family and Medical Leave & Supplemental Benefits

Revised: February 14, 2020 – Created by OFM/State Human Resources

How long can an employee be absent due to PFML?

PFML absences can be 12–18 weeks, depending on the qualifying condition. If an employee has a personal medical *and* a family event, they could be absent up to 16 weeks. Your HR representative will be able to assist you with the timelines.

What are the qualifying events that trigger an employer to provide individual notice to the employee of their PFML rights?

- Having a baby
- Taking care of oneself or a sick family member
- Military exigency
- Overnight hospitalization
- Employee absences for 7 consecutive days to care for self or family member
- Significant use of sick leave
- Employee comments (may be very subtle)

Does the employer have to provide notification to the employee about PFML?

Yes. The employer must send a letter to the employee within 5 days of learning of a possible qualifying event about PFML. This should be sent by your HR representative. ESD will provide a template for the notification at the end of December 2019.

How will I know my employee is going to apply for PFML?

The employee is required to provide 30 days' written notice to their employer if leave is foreseeable or provide notice as soon as practicable if leave is unplanned. ESD will notify the employer when an application for benefits is filed and upon approval or denial of the employee's application.

Who approves an employee's PFML absence and corresponding wage replacement?

The PFML Insurance Program is administered by ESD. ESD determines whether a claim for leave is approved, how much wage replacement is provided and how long the absence will be. Denial of a claim will be processed through ESD.

Am I required to hold my employee's job while they are out on PFML?

An employee may return to the same or equivalent position if the employee has worked 1,250 hours in the previous 12 months. There may be limited circumstances where job restoration is denied. Please consult your labor and personnel AAG for advice.

Does PFML replace FMLA?

No. PFML and FMLA are separate entitlements and should be treated differently.

- PFML is a statewide insurance program that provides wage replacement, along with job protections, similar to FMLA (if eligible).
- FMLA is a federal entitlement providing job protections and insurance maintenance for employees who qualify. FMLA is unpaid, although employees may choose to use their paid leave to substitute for the unpaid absence.
- The use of FMLA does not diminish the benefit available in PFML.
- The employer cannot interfere with, restrain or deny an employee's use of PFML.

Does FMLA run concurrently with PFML?

It depends on the circumstances. Generally if the employee qualifies for FMLA for a condition that also qualifies under PFML, then PFML and FMLA will run concurrently. Remember that it's the employee's choice as to whether to apply for PFML benefits. In some situations, FMLA may already be exhausted and PFML may be running on its own. Because the answer is fact-specific, please contact your labor and personnel AAG for advice.

What happens if an employee applies for both FMLA and PFML and they are approved for PFML but not for FMLA? Does this make a difference?

No. It does not make a difference.

PFML is a statewide program that has a different qualification criteria than FMLA. PFML also expands the family members who are covered by this benefit. It is possible for an employee to be approved for PFML and not qualify for FMLA.

Can an employee choose to apply for PFML prior to exhausting their accrued leave?

Yes. The decision to apply for PFML is the employee's choice. Management cannot interfere with the employee's ability to access PFML wage replacement or require that the employee exhaust their accrued paid leave before taking PFML.

Does an employee have a right to take PFML intermittently?

Yes. PFML may be used intermittently as long as the employee is absent for 8 consecutive hours in a week. For example, the employee is out 4 hours on Tuesday afternoon and 4 hours Wednesday morning or out for 8 hours one day per week.

Are employees still required to meet the same performance expectations even though they are absent due to PFML?

As with FMLA, supervisors should adjust performance expectations to account for the employee's absence due to protected leave.

Do I get a copy of the medical documentation my employee provided to ESD for PFML?

No. ESD will not share that information with the employer.

Do employees need to submit medical documentation to the agency to take a medical leave of absence if they have already submitted medical documentation to ESD?

Yes. The agency should follow its existing procedures to process medical documentation requested and submitted in connection with FMLA, disability accommodation and other medical leaves of absence.

Is the employer required to maintain an employee's health insurance when they are out on PFML?

Yes. Under PFMLA, if the employee has worked 1,250 hours in the previous 12 months, the employer must maintain the employee's benefits. This requirement is reinforced by Health Care Authority's administrative code, WAC 182-12-138, which indicates that if an employee is on the family and medical leave insurance program under chapter 50A RCW then the employee may continue to receive the employer contribution toward public employee benefits (PEBB) insurance coverage. This would be the same as with FMLA, where the employee is responsible for their portion of the premium while on leave.

If the employee does not meet the eligibility requirements (1,250 hours worked) for continuation of health coverage, the employee may elect to intersperse 8 hours of accrued leave per month to maintain their health coverage, per PEBB rules (WAC 182-12-131).

What are the employee's responsibilities for coverage of insurance benefits?

To be entitled to continuation of health coverage, the employee must have worked 1,250 hours in the previous 12 months. If covered, the employee will be responsible for paying their portion of the premium, like they do with FMLA.

How will an employee account for their absence while on approved PFML?

Employees will be responsible for submitting the appropriate leave to cover their absence. HRMS codes will be available to help track the employee's absence as LWOP-PFML.

What if the employee's circumstances change and the employee needs to be on more leave? Who do they contact?

Employees should first follow the agency's leave request process. Next, the employee should contact ESD to file or reopen a weekly claim for PFML benefits.

May an employee use accrued leave while accessing PFML?

Yes. The employee may use their accrued leave and shared leave and will have to report the use of that leave to ESD. However, the use of accrued leave and shared leave will reduce the number of hours ESD approves for leave and ultimately reduce the employee's PFML wage replacement benefit.

Is the employer offering a supplemental benefit to the employee while they are on PFML?

The state intends to offer a supplemental benefit that will be available May 1, 2020; keep in mind that as we work to achieve organizational readiness we may need to adjust the effective date.

What is a supplemental benefit?

Employees may elect to designate their accrued paid leave (sick leave, vacation leave, compensatory time, and personal holidays) as a supplemental benefit while on approved PFML. If an employee elects to use their accrued paid leave as a supplemental benefit it draws down their leave banks.

State HR will be adopting administrative rules related to supplemental benefits in the near future. Please be sure to review those as well.

How does an employee request the supplemental benefit?

An employee requests leave as a supplemental benefit through their normal time and attendance process, using the PFML supplemental benefit codes.

Does an employee have to report the use of the supplemental benefit to ESD?

No. An employee does not have to report the use of accrued paid leave designated as a supplemental benefit to ESD.

Will the use of the supplemental benefit impact an employee's PFML payment?

No. The supplemental benefit is in addition to the PFML wage replacement benefit.

Does the use of the supplemental benefit count toward the qualification criteria for PFML?

No. The supplemental benefit would not be factored into the 820 hours to qualify for PFML Insurance Program.

Can an employee receive a wage replacement under the PFML insurance program while also receiving workers' compensation?

No. Employees who are receiving workers' compensation benefits may not receive a wage replacement under the PFML program.

Will employers have the option of hiring temporary employees or granting overtime to cover the 12-18 week absences?

This is a management decision point.

If the employee already used parental leave in 2019, can the employee still use PFML in 2020?

Yes. The employee is eligible for the PFML benefit, which is separate from the FMLA benefits. The employee has 12 months from the date of a child's birth, adoption or placement to take PFML. This means that if the employee's child was born or placed in the employee's family after Jan. 2, 2019, the employee can still take leave in 2020, but they may not qualify for the full 12–16 weeks of PFML.

For example, if the child was born Feb. 1, 2019, the employee qualifies for paid leave from Jan. 1, 2020, until Feb. 1, 2020. But if the child joined a family on May 25, 2019, the employee can apply for benefits and take leave any time before May 25, 2020.

How does LWOP-PFML affect a general government employee's anniversary date, unbroken service date, periodic increment date and seniority date?

For non-represented employees: An employee's anniversary date, seniority date, unbroken service date and periodic increment date are adjusted for any period of LWOP that exceeds 15 calendar days.

For represented employees (excluding WSF): An employee's seniority date is adjusted for any LWOP that exceeds 15 calendar days.

Does payment of the PFML premium affect whether an employee qualifies for the PFML benefit?

No. Whether an employee will qualify for the PFML benefit is determined by ESD after reviewing if the employee meets the eligibility criteria.

How should the 1,250 hour requirement for job restoration and continuation of health benefits be calculated?

The 1,250 hour requirement includes actual time worked only. It does not include paid time off such as time used as vacation leave, sick leave, personal holidays, compensatory time off or shared leave.

Will the money an employee receives under the PFML Insurance program be considered income for tax reporting?

ESD is waiting for a definitive response from the IRS on this.

Will the employee receive retirement credits while receiving wage replacement under the Paid Family and Medical Leave Program at ESD?

No. The employee is receiving payment from ESD, not from their employer. Therefore it is not reportable to the Department of Retirement Systems. An employee does have the opportunity to purchase back any lost credit from DRS by requesting a bill for the Authorized Leave of Absence credit. This is similar to what occurs when an employee is receiving workers' compensation benefits from L&I.