



# FMLA Washington

## Federal vs. Washington Family & Medical Leave Laws

|                          | FEDERAL ELEMENTS  | STATE ELEMENTS   |
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| <b>Employers Covered</b> | <p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p> | <p>In addition to the federal FMLA, Washington has leave laws regarding (1) unpaid family and medical leave, <b>effective until Dec. 31, 2019</b>, (2) pregnancy disability leave (contained in the Washington State Law Against Discrimination, or WLAD), (3) military family leave, (4) leave for victims of domestic violence, sexual assault or stalking and their family members, (5) family sick leave (6) paid sick leave, <b>effective Jan. 1, 2018</b>, and (7) paid family and medical leave, <b>effective Jan. 1, 2020</b>.*</p> <p><b>Unpaid family and medical leave:</b> Employers with 50 or more employees in at least 20 workweeks of the current or preceding year (including the state, state institutions and agencies, and any unit of local government).</p> <p><b>Pregnancy disability leave:</b> Employers with eight or more employees.</p> <p><b>Military family leave:</b> All employers.</p> <p><b>Domestic violence/sexual assault leave:</b> All employers.</p> <p><b>Family sick leave:</b> All employers that offer paid leave.</p> <p><b>Paid sick leave:</b> All employers covered by the Washington Minimum Wage Act.</p> |



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|                           |   | <p><b>Paid family and medical leave:</b> All employers. Employers with fewer than 50 employees are not required to pay the employer portion of the premium.</p>  |
| <b>Employees Eligible</b> | <p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p> | <p><b>Unpaid family and medical leave:</b> Similar to federal FMLA</p> <p><b>Pregnancy disability leave:</b> Female employees with pregnancy-related disabilities.</p> <p><b>Military family leave:</b> Employees who work an average of 20 or more hours per week and who are the spouse or registered domestic partner of a member of the U.S. Armed Forces, National Guard or Reserves who has been deployed or is on leave from deployment during a military conflict.</p> <p><b>Domestic violence/sexual assault leave:</b> Employees who are victims of domestic violence, sexual assault or stalking, and their family members (including a child, spouse, parent, parent-in-law, grandparent or person the employee is dating).</p> <p><b>Family sick leave:</b> Employees who are entitled to paid leave.</p> <p><b>Paid sick leave:</b> All employees covered under the Washington Minimum Wage Act. Includes part-time, full-time, hourly, salaried and temporary employees.</p> <p>Employers may require a 90-day waiting period before newly hired employees may use any accrued paid sick leave. Accrual of paid sick leave begins upon hire.</p> <p><b>Paid family and medical leave:</b> An employee who works at least 820 hours during the qualifying period. The qualifying period is the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately before the employee's application for leave.</p> |
| <b>Leave Amount</b>       | <p>Generally, up to a total of 12 weeks during a 12-</p>  | <p><b>Unpaid family and medical leave:</b> Up to 12 workweeks during any 12-month period. Runs concurrently with FMLA leave, but is in addition</p>  |

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|                      | <p>month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p> | <p>to any pregnancy disability leave. Spouses working for the same employer are required to share the leave entitlement for the birth or placement of a child or for a parent’s serious health condition. Entitlement to leave for birth or placement of a child expires at the end of the 12-month period beginning on the date of the birth or placement.</p> <p><b>Pregnancy disability leave:</b> Leave for the period of disability. Following childbirth without complications, a typical pregnancy disability leave lasts six to eight weeks. Leave runs concurrently with the federal FMLA, but does not run concurrently with Washington family and medical leave.</p> <p><b>Military family leave:</b> Up to 15 days of leave per deployment during a period of military conflict.</p> <p><b>Domestic violence/sexual assault leave:</b> Reasonable leave for legal or law enforcement assistance, medical treatment or counseling, or to help a victim obtain needed treatment or services.</p> <p><b>Family sick leave:</b> Amount of accrued paid leave available to the employee.</p> <p><b>Paid sick leave:</b> Employees must accrue a minimum of one hour of paid sick leave for every 40 hours worked. The law does not address annual accrual or usage caps.</p> <p><b>Paid family and medical leave:</b> Eligible employees may take the following leave amounts during a consecutive 52-week period:</p> <ul style="list-style-type: none"> <li>• <i>Family leave:</i> Up to 12 weeks</li> <li>• <i>Medical leave:</i> Up to 12 weeks (14 weeks if the employee experiences a serious health condition due to pregnancy that results in incapacity)</li> <li>• <i>Combined family and medical leave:</i> Up to 16 weeks (18 weeks if the employee experiences a serious health condition due to pregnancy that results in incapacity)</li> </ul> |
| <b>Type of Leave</b> | Unpaid leave for:  | <b>Unpaid family and medical leave:</b> Similar to  |

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|  | <ul style="list-style-type: none"> <li>• Birth of employee's newborn child;</li> <li>• Placement of child with employee for adoption or foster care;</li> <li>• Providing care for employee's parent, child or spouse with serious health condition;</li> <li>• Employee's own serious health condition;</li> <li>• Any qualifying exigency when employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</li> <li>• Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul> | <p>federal FMLA</p> <p><b>Pregnancy disability leave:</b> Leave as a reasonable accommodation for a pregnancy-related disability. Employers must treat a woman on pregnancy-related leave the same as other employees on leave for sickness or temporary disabilities.</p> <p><b>Military family leave:</b> Unpaid leave during a period of military conflict when the employee's spouse or domestic partner either:</p> <ul style="list-style-type: none"> <li>• Has been notified of an impending call or order to active duty but has not yet been deployed; or</li> <li>• Is on leave from deployment.</li> </ul> <p><b>Domestic violence/sexual assault leave:</b> Unpaid leave for family members to help a victim obtain needed treatment or services, or for victims of domestic violence, sexual assault or stalking to:</p> <ul style="list-style-type: none"> <li>• Seek legal or law-enforcement assistance;</li> <li>• Obtain medical treatment or counseling;</li> <li>• Obtain services from a domestic violence shelter or rape crisis program; or</li> <li>• Participate in safety planning or relocation activities.</li> </ul> <p><b>Family sick leave:</b> Employees may use any or all of their earned paid leave to care for:</p> <ul style="list-style-type: none"> <li>• A child with a health condition that requires treatment or supervision; or</li> <li>• A spouse, registered domestic partner, parent, parent-in-law or grandparent who has a serious or emergency health condition.</li> </ul> <p><b>Paid sick leave:</b> Eligible employees must be able to use accrued paid sick leave for any of the following reasons:</p> <ul style="list-style-type: none"> <li>• An employee's own mental or physical illness, injury or health condition, including the need for medical diagnosis, care or treatment, and preventive medical care;</li> </ul> |

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|  |                  | <ul style="list-style-type: none"> <li>• To care for the employee’s family member with a mental or physical illness, injury or health condition, including the family member’s need for medical diagnosis, care or treatment, and preventive care;</li> <li>• Closure of the employee’s place of business by order of a public official due to any health-related reason or closure of an employee’s child’s school or place of care by order of a public official due to any health-related reason; or</li> <li>• Employees who are victims of domestic violence, sexual assault or stalking (or who are family members of a victim) in order to:             <ul style="list-style-type: none"> <li>○ Seek or obtain legal, law enforcement or social services assistance;</li> <li>○ Seek or obtain medical treatment or counseling; or</li> <li>○ Participate in safety planning or take other actions to increase safety.</li> </ul> </li> </ul> <p><b>Paid family and medical leave:</b> Eligible employees may take leave to care for a family member or due the employee’s own medical condition as follows:</p> <p>Family leave:</p> <ul style="list-style-type: none"> <li>• To participate in providing care, including physical or psychological care, for a family member of the employee due to the family member’s serious health condition;</li> <li>• To bond with the employee’s child during the first 12 months after the child’s birth (or the first 12 months after the placement of a child under the age of 18 with the employee); and</li> <li>• For a qualifying exigency as permitted under the federal FMLA.</li> </ul> <p>“Family member” is defined to include a child of any age, a parent, the employee’s spouse or registered domestic partner, and grandparents, grandchildren or siblings of the employee.</p> <p>Medical leave:</p> |

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|  |  | <ul style="list-style-type: none"> <li>For an employee’s own serious health condition.</li> </ul>  |
| <p><b>Serious Health Condition/Serious Injury or Illness</b></p> | <p><b>Serious Health Condition:</b></p> <p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> <li>A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment;</li> <li>A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or</li> <li>Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious Injury or Illness:</b></p> <p>In the case of a member of</p> | <p><b>Unpaid family and medical leave:</b></p> <ul style="list-style-type: none"> <li>Serious health condition: Similar to federal FMLA</li> <li>Serious injury or illness: No provision</li> </ul> <p><b>Paid family and medical leave:</b> Similar to federal FMLA</p> |

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|                             | <p>the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the member became a veteran.</p> |  |
| <b>Health Care Provider</b> | <p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse</p>   | <p><b>Unpaid family and medical leave:</b> Licensed physician, osteopathic physician and surgeon, licensed advanced registered nurse practitioner or any other person determined by the director of the Department of Labor and Industries to be capable of providing health care services.</p> <p><b>Paid sick leave:</b> No provision</p> <p><b>Paid family and medical leave:</b> Licensed physician, osteopathic physician and surgeon, licensed advanced registered nurse practitioner or any other person determined by the director of the Department of Labor and Industries to be</p> |

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|                                   | <p>practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.</p> | <p>capable of providing health care services.</p>  |
| <b>Intermittent Leave</b>         | <p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>  | <p><b>Unpaid family and medical leave:</b> Permitted for a serious health condition if medically necessary. Permitted for care of a newborn or new placement by adoption or foster care if the employer agrees.</p> <p><b>Pregnancy disability leave:</b> Permitted; however, an employer may require a physician's statement to verify the need for intermittent leave if this is a uniform policy for disability leave.</p> <p><b>Military family leave:</b> No provision</p> <p><b>Domestic violence/sexual assault leave:</b> Permitted</p> <p><b>Family sick leave:</b> Permitted if allowed for the employee's own illness under the employer's paid leave policy.</p> <p><b>Paid sick leave:</b> No provision regarding the increments in which paid sick leave may be used.</p> <p><b>Paid family and medical leave:</b> No specific provisions.</p> |
| <b>Substitution of Paid Leave</b> | <p>Employees may elect, or employers may require,</p>  | <p><b>Unpaid family and medical leave:</b> Employees may elect to substitute any paid leave.</p>   |

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|                             | <p>accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.</p> | <p><b>Pregnancy disability leave:</b> Employer must treat a woman on pregnancy-related disability leave the same as employees on leave for sickness or other temporary disabilities.</p> <p><b>Military family leave:</b> Employees may elect to substitute any accrued leave they are entitled to.</p> <p><b>Domestic violence/sexual assault leave:</b> Employees may elect to use any of their sick leave and other paid time off, compensatory time or unpaid leave time.</p> <p><b>Family sick leave:</b> Employees may use any or all of their earned paid leave to care for an ill child, spouse, registered domestic partner, parent, parent-in-law or grandparent.</p> <p><b>Paid sick leave:</b> No provision regarding employers' existing paid time off policies and whether these policies may satisfy the paid sick leave requirement.</p> <p><b>Paid family and medical leave:</b> Employees may choose to use available paid time off instead of paid family or medical leave benefits, but may not receive both concurrently.</p> |
| <b>Reinstatement Rights</b> | <p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>                 | <p><b>Unpaid family and medical leave:</b> Employee must be restored to the position held when the leave commenced, or to an equivalent position at a workplace within 20 miles of the employee's previous workplace.</p> <p><b>Pregnancy disability leave:</b> Employee must be permitted to return to work in the same job or a similar job of at least the same pay after leave.</p> <p><b>Military family leave:</b> Employee must be restored to the position held when the leave commenced, or to an equivalent position at a workplace within 20 miles of the employee's previous workplace.</p> <p><b>Domestic violence/sexual assault leave:</b> Similar to federal FMLA</p> <p><b>Family sick leave:</b> No provision</p> <p><b>Paid sick leave:</b> Employers may not retaliate or discriminate against employees for exercising</p>  |

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|   |  | <p>paid sick leave rights.</p> <p>Employers are also prohibited from counting paid sick leave absences against an employee under the employer's attendance policy that could lead to discipline.</p> <p><b>Paid family and medical leave:</b> Employees who work for an employer that employs 50 or more employees, have worked for the employer for at least 12 months and have worked at least 1,250 hours in the 12 months prior to leave are entitled to be reinstated to their original position, or an equivalent position upon return from family or medical leave.</p>   |
| <b>Key Employee Exception to Reinstatement Rights</b> | Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met. | <p><b>Unpaid family and medical leave:</b> Similar to federal FMLA</p> <p><b>Paid family and medical leave:</b> Similar to federal FMLA</p>  |
| <b>Maintenance of Health Benefits During Leave</b>    | Health insurance must be continued under same conditions as prior to leave.  | <p><b>Unpaid family and medical leave:</b> If coverage is not continued by an employer policy or a collective bargaining agreement during the period of leave, the employee may continue health and dental coverage at his or her own expense (up to 102 percent of the applicable premium) for the leave period.</p> <p><b>Pregnancy disability leave:</b> Employer must treat a woman on pregnancy-related disability leave the same as employees on leave for sickness or other temporary disabilities.</p> <p><b>Military family leave:</b> If coverage is not continued by an employer policy or a collective bargaining agreement during the period of leave, the employee may continue health and dental coverage at his or her own expense (up to 102 percent of the applicable premium) for the leave period.</p> <p><b>Domestic violence/sexual assault leave:</b> Similar to federal FMLA</p> |

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|                                  |  | <p><b>Family sick leave:</b> No specific provision</p> <p><b>Paid sick leave:</b> No specific provision</p> <p><b>Paid family and medical leave:</b> An employer must maintain an employee's existing health benefits during any paid family and medical leave if the employee's leave is covered by the federal FMLA.</p>  |
| <b>Leave Requests</b>            | <p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p> | <p><b>Unpaid family and medical leave:</b> Similar to federal FMLA, except does not cover active duty leave.</p> <p><b>Pregnancy disability leave:</b> Employer may require notice if it is consistent with notice required for other forms of disability leave.</p> <p><b>Military family leave:</b> Employee must provide notice of the intent to take leave within five business days of receiving official notice of an impending call or order to active duty or a leave from deployment.</p> <p><b>Domestic violence/sexual assault leave:</b> Employees must give advance notice when possible. In the case of an emergency or unforeseen circumstance due to domestic violence, sexual assault or stalking, employees or their designees must give notice no later than the end of the first day that the employee takes leave.</p> <p><b>Family sick leave:</b> Employee must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.</p> <p><b>Paid sick leave:</b> An employer may require reasonable notice from employees of the need to be absent. However, the notice requirements may not interfere with the employee's lawful use of paid sick leave.</p> <p><b>Paid family and medical leave:</b> Similar to federal FMLA.</p> |
| <b>Certification Requirement</b> | Employer may require certification for the following:  | <p><b>Unpaid family and medical leave:</b> Employer may require certification for leave because of a serious health condition. Employer may also</p>  |

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|  | <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p> | <p>require certification to demonstrate the employee's fitness to return to work where the employer has a uniformly applied practice or policy to require certification.</p> <p><b>Pregnancy disability leave:</b> Employer may require a physician's statement to verify the leave period if it is consistent with the employer's uniform policy.</p> <p><b>Military family leave:</b> No provision</p> <p><b>Domestic violence/sexual assault leave:</b> Employer may require verification of the need for leave.</p> <p><b>Family sick leave:</b> No provision</p> <p><b>Paid sick leave:</b> For paid sick leave absences exceeding <b>three days</b>, an employer may require reasonable documentation to verify that use of paid sick leave was for a permitted reason. Documentation must be provided to the employer within a reasonable period of time after the leave. Employer's verification requirements may not result in an unreasonable burden or expense on the employee, or violate privacy.</p> <p><b>Paid family and medical leave:</b> Similar to federal FMLA.</p> |
| <b>Executive, Administrative, and Professional Employees</b> | <p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>   | <p>No provision</p>  |
| <b>Other</b>   |  | <p>Registered domestic partners must be treated the same as spouses for most purposes under Washington law, including for employee leave purposes.</p>   |

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| <b>Statutes</b> | 29 USC 2601      | WA ST § 49.78 (family and medical leave); § 49.60 (WLAD); § 49.77 (military family leave); § 49.76 (domestic violence/sexual assault leave); § 49.12.265-49.12.295 (family sick leave); WA ADC § 162-30-020 (pregnancy disability leave); <a href="#">Initiative Measure No. 1433</a> (paid sick leave); <a href="#">Senate Bill 5975</a> (paid family and medical leave) |

**SPECIAL NOTE:** Please note that the information in the above chart focuses on statewide laws. Employers must be aware that numerous cities across the country have enacted local ordinances that mandate employers to provide paid sick leave to employees. An employer located in a city with a local paid sick leave law must generally comply with the local ordinance and statewide law, if applicable. Washington’s paid sick leave law expressly permits localities to enact additional labor standards and does not preempt any existing local paid sick leave law.

\*The Washington paid family and medical leave program will be administered by the state’s [Employment Security Department](#), including processing applications for benefits and administering payments under the program. However, all Washington employers are covered under the law and will be responsible for making contributions to the program, administering employee payroll deductions and remitting the amounts to the state agency. Employers with fewer than 50 employees are not required to make employer contributions. Payroll deductions to fund the program begin Jan. 1, 2019. Eligible employees will begin receiving benefits under the program effective Jan. 1, 2020. Employers should review existing leave, paid time off and attendance policies to determine whether they should be updated to comply with the new law.

**Department of Labor and Industries**

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