

# *Unemployment and PFML*

*Washington State Employment Security Department*



# Unemployment Insurance

## Unemployment Insurance - federal-state partnership:

- Each state administers its own unemployment insurance (UI) program.
- Employment Security Department (ESD):
  - Collects unemployment taxes from employers.
  - Pays unemployment benefits to claimants.

# Unemployment Insurance

- **Employers pay 100% of UI tax.**
- **Tax Due = Taxable Wages multiplied by Tax Rate.**
- **For 2019 this ranges from .13% to 5.4%.**
- **Components of employer tax rate:**
  - Experience tax = Benefits paid to former employees divided by taxable wages over the past four years.
  - Social tax – Covers shared costs, provides shock absorption during recessions.

# Unemployment Insurance

## Socialized benefits:

- In some cases, benefits paid to claimants are not charged to a particular employer, such as:
  - Claimant voluntarily quit for reasons that are not the employer's fault.
  - Natural disaster.
  - Employee was temporarily replacing someone who was on Paid Family and Medical Leave.
  - These benefits become part of “social tax” and are shared (“socialized”) across all employers.

# Unemployment Insurance

## Monetary laws set the amount of benefits:

- Claimants need to work at least 680 hours in the base year.
  - Standard base year: First four of the last five calendar quarters.
  - Alternate base year: Last four completed quarters.
- Claimants can receive regular benefits up to 26 weeks.

# Unemployment Insurance

## Weekly Benefit Amount (WBA):

- Generally, UI benefits replace approximately 50% of each claimants' weekly wages.
- Minimum and maximum WBA (updated in July):
  - Current maximum = \$749.
  - Current minimum = \$178.
- If claimants earn income in a week, ESD may reduce benefits by a portion of that income.

# Filing a Claim

## After claimants file claim:

- First week = “waiting week” = no benefits.
- ESD reviews information from claimants about job separation and makes initial eligibility decision.
- ESD pays initial claims within 14 days of when claimants filed.
- If there are issues regarding claims, ESD adjudicates the issues within 21 days.

# Filing a Claim

## Claimants must file weekly:

- Each week, must certify: Able, available, and actively seeking work.
- Must complete three job search activities each week and record in a job search log.
- Must continue to file a claim each week, even if waiting for a determination.



# Disqualification

<b>RCW 50.20.050</b>	<b>Voluntary quit without good cause</b>
<b>RCW 50.20.060 (066)</b>	<b>Discharged for misconduct</b>
<b>RCW 50.20.070</b>	<b>Misrepresentation of one's claim</b>
<b>RCW 50.20.080</b>	<b>Refusing to work</b>
<b>RCW 50.20.090</b>	<b>Labor dispute</b>
<b>RCW 50.20.095</b>	<b>Full time school attendance</b>

•Disqualifications begin on the Sunday of the week in which the disqualification is imposed.

# Training Benefits Program

- **Allows claimants who are receiving UI to get additional weeks of unemployment benefits while training for careers in high-demand fields.**
- Average number of weeks of benefits = 26 weeks.
- While participating in the program, claimants don't need to look for work.

# Commissioner-Approved Training Program

- **Claimants can get unemployment benefits while attending approved full-time training programs.**
- While participating in the program, claimants don't need to look for work.
- Eligibility:
  - Laid off because of permanent reduction in employer's operations.
  - Lost job for "allowed" reason and - because of lack of jobs in claimant's field - unlikely to find same type of work.

# WorkSource

## WorkSource:

- Statewide partnership of state, local, and nonprofit agencies; provides assistance online and in person.
- Provides employment and training services for employers, job seekers, veterans, agricultural workers, and others.
- Provides apprenticeships, resume workshops, interview tips, computer courses, skills assessments, and more.

# WorkSource

## WorkSource:

- Has helped over 138,000 people find jobs.
- Has more than 60 affiliates and connection sites throughout the state, such as:
  - Local libraries.
  - Community college campuses.

# Paid Family and Medical Leave

## Washington **Paid Family & Medical Leave**

- On January 1, 2020, Washington workers were eligible for paid leave benefits to care for themselves and their families when they need it most.

# Program Timeline



## How it Works

- Paid by premiums collected from employers and employees.
- Eligible employees can receive 16 weeks of combined family and medical leave in a year, and up to 18 weeks if they have complications in pregnancy.
- Proportional weekly wage replacement of \$100 to \$1000.
- Grants available to help employers offset the cost of employees who are on leave.



# Employer Impact

- Nearly all Washington employers, including out-of-state employers with Washington employees, are required to participate. Exceptions:
  - Self-employed (but may opt in).
  - Federal employees.
  - Federally-recognized tribes (but may opt in).
- Employers who want to operate their own program may apply for a voluntary plan.

# Employer Requirements

## Employers must:

- Submit to ESD on a quarterly basis:
  - Wages.
  - Hours worked.
  - Other information.
- Collect and remit premiums.
- Notify eligible employees when they experience a qualifying event.

# Benefits to Workers

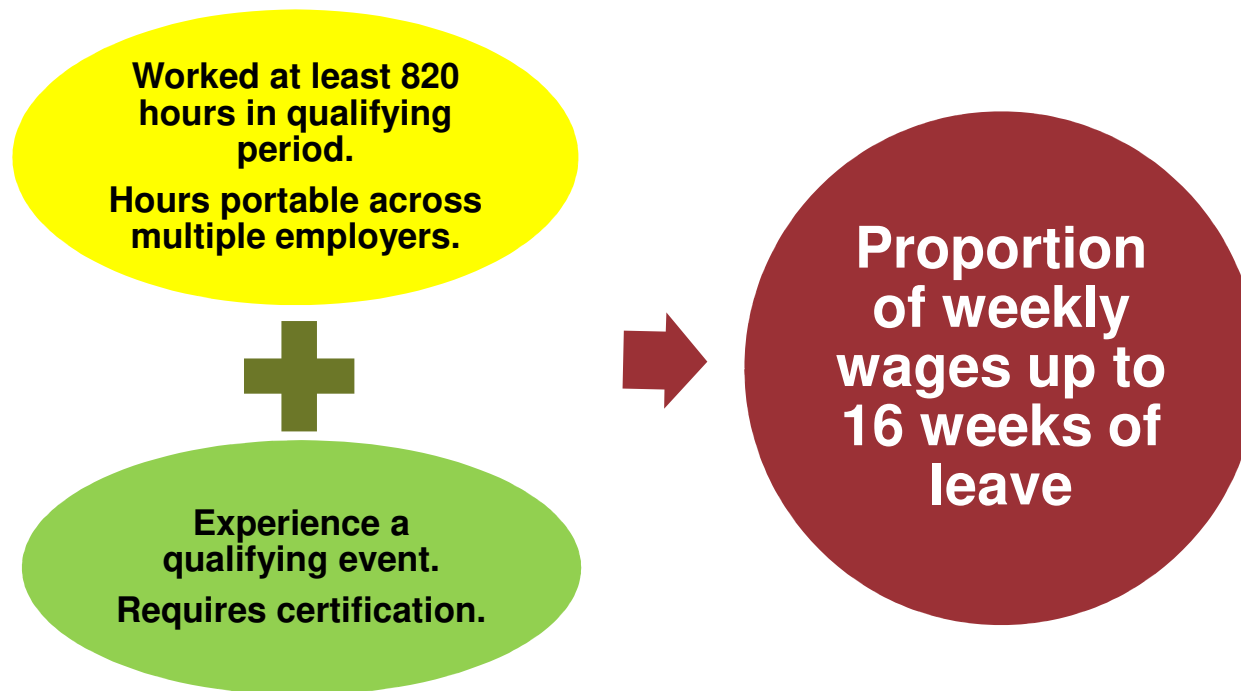
## Two types of paid leave:

- **Medical leave** – Employee has a serious health condition or medical event.
- **Family leave** – Employee will provide care for family members who have a serious health condition or medical event, bond with a child (birth, adoption, foster placement), or for military families for certain military-connected events.

## Job protection:

- Job restoration when employees return from leave if they meet similar requirements under FMLA.

# Employee Eligibility



# Premiums

For 2019 = 0.4% of employees' gross wages.

- Employees contribute about 63.33% through payroll deduction.
- Employers contribute about 36.67%, but can opt to contribute more so that employees can contribute less.

Beginning in 2022, ESD can adjust premium rates annually based on paid claims.

Businesses with fewer than 50 employees:

- Not required to pay employer portion unless they want to access Small Business Assistance Grants.

# Small Business Assistance Grants

## Who's eligible?

- Employers with between 50-150 employees
- Employers with between 1-49 employees who elect to pay the employer share of premiums



**Employers can apply for a \$3,000 grant if they hire a temporary worker to replace an employee who's on leave for at least seven days.**



**Employers can apply for a grant of up to \$1,000 if they incur significant additional wage-related costs due to employees' leave.**



**An employer may apply for ten grants per year and once for each employee on leave.**



**Employers with voluntary plans do not qualify for these grants.**

# Voluntary Plans

- Employers can apply to ESD to set up their voluntary plans for family leave, medical leave, or both.
- For first three years, ESD must review and reapprove annually. After that, ESD only reviews if employers modify their plans.
- Benefit amount and duration for voluntary plans must be equivalent to or better than state plan.
- Employers and employees don't pay premiums to ESD, but employers must still report hours and wages to ESD quarterly.



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# FMLA, Reasonable Accommodation and Shared Leave

Julie King, Employment Risk Manager  
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## Topics of Discussion

**Family Medical Leave Act (FMLA)**

**Families First Coronavirus Response Act**

**Reasonable Accommodation**

**Shared Leave**



## What is Family Medical Leave Act (FMLA)?

- Federal law administered and enforced by US Department of Labor's Wage and Hour Division.
- Eligible employees are entitled to take 12-weeks of unpaid leave in a 12-month period for certain qualified reason.
- Employer cannot penalize an employee for taking leave under FMLA – the law protects employees from interference and retaliation for exercising their FMLA rights.
- Requires that employers maintain the health benefits for eligible workers and restorations to their same or an equivalent job after leave.



## Employee Eligibility

- Worked for an employer at least 12 months (within the last 7 years. The months do not need to be consecutive)
- Have worked at least 1,250 hours in the 12 months before leave begins



Qualifying  
Circumstances



Birth, adoption, foster child



Military Caregiver Leave  
&  
Exigency leave



Serious health condition  
(employee and/or family  
member)

## Qualifying Family Members

**Parent** - Parent is a biological, adoptive, step or foster, or any parent who stood in loco parentis. Does not include in-laws.

**Spouse** - Spouse is husband or wife; includes common law & same-sex marriages.

**Child** - Child is a biological, adopted, foster child, step-child, legal ward, or a child of a person standing in loco parentis.

**Birth of a child** - Care of a newborn child, and placement of child for adoption or foster care.

## Employer Actions Prohibited

- Making pre-hire inquiries regarding FMLA leave.
- Interfering with an employee's rights under FMLA, claim interference.
- Retaliating against employees who exercise their FMLA rights.



## FMLA – Requirements

- The law sets requirements for notice by both the employee and the employer:
  - Employee: 30 days of intent to take leave (if possible).
  - Employer: notify of FMLA rights within 5 days.
- Display FMLA poster and provide general FMLA notice in employer's handbook or other written materials about leave.
- Employer has the right to require certification of the need for FMLA. Use DOL medical certification forms to avoid violations.
- Grant or deny the leave request and provide designation notice to employee.
- Maintain records no less than three years. Records may be reviewed by DOL.

## Families First Coronavirus Response Act

- Requires employers to provide employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19 if the employee cannot telework.
- Provisions apply from April 1, 2020- December 31, 2020.
- Emergency Paid Sick Leave (EPSL) – Three options to receive full pay and two options to receive 2/3 pay.
- Emergency Family and Medical Leave (EFML) – Two options for up to 10 weeks to care for an individual who has COVID-19 OR caring for a child if the school or place of care has been closed.
- Refer to Families First Coronavirus Response Act Overview chart for specific details.



## References

- [US Department of Labor FMLA Act](#)
- [The United States Code, Federal Register and Code of Federal Regulations](#)
- [The Employer's Guide to Family and Medical Leave Act](#)
- [Families First Coronavirus Response Act](#)
- [Families First Coronavirus Response Act: Questions and Answers](#)



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## Reasonable Accommodation

## Americans With Disabilities Act (ADA) Washington Law Against Discrimination (WLAD)

- Prohibits discrimination against disabled persons; persons having a history of being disabled; and persons perceived as being disabled.
- Requires employers to reasonably accommodate the known limitations of a qualified individual with a disability.
- Restricts disability-related inquiries and medical examinations in the pre-offer, post-offer, and employment stages.



## Disability Defined in Law

- Washington Law – [RCW 49.60.040](#)
- [Americans with Disabilities Act of 1990](#) (Amended 2008)
- Enforcing Agencies:
- [Equal Employment Opportunity Commission](#)
- [Washington State Human Rights Office](#)

## Reasonable Accommodation

Reasonable Accommodations are adjustments or changes to a job, work environment, policy, practice, or procedure that allows a qualified individual with a disability an equal employment opportunity.

Reasonable Accommodations are required to:

- Provide access to the recruitment and application process.
- Allow an employee to perform the essential functions of the job.
- Ensure that employees have an equal opportunity to participate in and benefit from the terms, conditions and privileges of employment.



# Reasonable Accommodation Leave

Permitting the use of paid leave, or unpaid leave, is a form of reasonable accommodation.

## **Examples of reasons an employee with a disability may need leave:**

- Obtain medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis), rehabilitation services; or physical or occupational therapy.
- To recuperate from an illness or an episodic manifestation of the disability,
- To obtain repairs on a wheelchair, accessible van, or prosthetic device,
- Training a service animal (e.g., a guide dog), or
- Receiving training in the use of Braille or to learn sign language.

## Supervisor Tips

- Ensure Essential Functions are identified in the Position Description.
- Do not ignore requests for accommodation.
- Participate in the interactive process in good faith.
- Document accommodation, especially if it a temporary accommodation.
- Medical information is confidential under HIPPA and GINA – You only need to know limitations – not the medical condition.

## What to Remember

An employer's failure to reasonably accommodate the sensory, mental, or physical limitations of a disabled employee constitutes discrimination . . . Unless the employer can demonstrate that such accommodation would result in an undue hardship to the employer's business.





## Undue Hardship

- Nature and cost of the accommodation
- Overall financial resources
- Impact on business

### “Undue Hardship”



- Accommodation requires **significant** difficulty/expense.
- Case-by-case consideration.
- Extensive, substantial disruption to business.
- Fundamentally alters the nature of the business.

## Avoid Findings in HRC/EEOC complaints

- Objective and fair in your employment practices
- Legal liability to engage in the interactive accommodation process
- Legal liability to accommodate
- Good Faith and Timely Action





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## Shared Leave

## Shared Leave

- Washington state leave sharing program
- RCW 41.04.660 and WAC 357-31-390
- Permits state employees to donate annual, sick or personal holidays to a fellow state employee for certain qualified reasons.

## Shared Leave - Use

- Employee or the employee's relative or household member suffers from an illness, injury, impairment, or physical or mental condition that is of an extraordinary or severe nature.
- Employee has been called to service in the uniformed services.
- Employee has the needed skills and has been accepted as a volunteer by a government agency or humanitarian non-profit organization to assist following a declared federal or state emergency.
- Employee is a victim of domestic violence, sexual assault, or stalking.
- Parental leave or pregnancy disability leave.

## Shared Leave Qualifiers

- Documented leave abuse may disqualify request
- Employee must be eligible to use leave
- Annual and Sick Leave balances must be 40 hours or less to use shared leave
- Medical information from a health care provider required
- Leave donations **MUST** be voluntary - coercion, threats, intimidation, or financially persuasion are prohibited

## Other Shared leave pools

- **Uniformed Services Shared Leave Pool (USSLP)**– WA State Military Dept. maintains a shared leave pool specifically for those state employees called to service in the US uniformed services.
- **Veterans' In-State Service Shared Leave Pool (VISSLP)**– WA State Veterans' Affairs administers a shared leave pool specifically for state employee who are a veteran or a spouse of a veteran to attend medical appointments or treatments for a service connected injury or disability.
- **Foster Parent Shared Leave Pool (FPSLP)**– Dept. of Social and Health Services maintains a shared leave pool for state employees who are licensed foster parent so they may care for a foster child and/or prepare to accept a foster child in their home.

Questions?





# Workers' Compensation

## *Quick Tips on Claims*



# Congratulations, you're a supervisor!



# What if you or your direct report are injured?



# Injured on the job?

- Two types of workers' compensation claims
  - Injury
    - A sudden traumatic event occurring from without. An incident at a fixed point of time.
  - Occupational Disease
    - Arises naturally and proximately out of employment.
    - Repetitive injurious motion, poor ergonomics, exposure to hazardous chemicals.

# Claim is allowed, now what?

- Non-compensable claims
  - Claimant does not miss more than three days due to the injury.
- Compensable claims
  - Medically certified to be off the job for more than three days.

# Compensable claim

- Totally unable to work
  - Time loss compensation benefits
  - Kept on salary
  
- Return to work light/modified duty or fewer hours
  - Loss of earning power benefits
  - Kept on salary

# Return to work coordinator

- Connect with your agency's return to work coordinator.



# Stay in contact

- Keep in touch
- Communicate regularly
- Be supportive





# Claim conclusion

- Prior to closing a claim
  - Medical treatment concluded
  - Ability to work assessed
  - Impairment evaluated

# Claim closure

