

Family Leave Laws

Federal, Washington state, and local laws give many employees the right to take time off from work when they are seriously ill, to care for a newborn or newly placed child, or to care for an ill family member. This memo is a summary of Washington state and federal law protecting employees who need family leave. It does not include local laws.



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When Do I Have the Right to Take Time Off From Work?

You have a right to unpaid leave if you have worked for at least 12 months for an employer with 50 or more employees, and have worked at least 1,250 hours in the 12 months prior to taking leave, and you need to:

- Give birth to and/or care for a newborn child; or
- Care for a newly placed adopted or foster child; or
- Care for your spouse, child, or parent if he or she has a serious health condition; or
- Care for yourself while recovering from a serious health condition that makes you unable to perform your job.

You also have the right to unpaid leave if you work for an employer with 8 or more employees and you need time off for a pregnancy-related illness, disability, or childbirth. This leave is in addition to the family leave described above.

What If I Work for An Employer With Fewer Than 50 Employees?

If you work for an employer with fewer than 50 employees, you are still entitled under state law to use any available paid leave – sick leave, vacation time, etc. – for family leave. This law also allows you to use that time to take care of a seriously ill grandparent. And as noted above, pregnant women who work for employers with 8 or more employees are entitled to leave for pregnancy-related illness, disability, or childbirth.

What If I Work for An Employer With Fewer Than 50 Employees and I Have No Sick Leave or Vacation Leave?

Local laws may provide you with a right to take some leave. Or, your employer may choose to give you family leave, paid or unpaid.

What if I am only a part-time employee?

If you have worked less than 1,250 hours in the 12 months prior to taking leave, you are not eligible for the 12 weeks of unpaid leave under either the federal FMLA or the state WMLA laws. This means that you need to have worked for roughly more than 25 hours a week in the 12 months preceding your leave to be eligible. You may still utilize your accrued paid sick leave or take pregnancy-related illness leave as stated above.

How Much Leave Can I Take?

If you work for an employer with 50 or more employees, state and federal law allow you to take 12 weeks of unpaid leave. There are limits on how often you can take this leave:

If you leave work to care for a newborn or newly placed child, you can only take leave during the first 12 months after the child is born or placed with you. That means, for example, that you have to use your 12 weeks of unpaid leave before your newborn child turns one year old.

If you work for an employer with 8 or more employees, you can take leave for pregnancy-related disability, illness, or childbirth. There is no set time limit for this leave. If you work for an employer with fewer than 8 employees, you should consult an attorney as you may still have some leave rights.

Can I Get Paid for My Leave?

The law does not require your employer to pay you for family leave. However, all employers in the state of Washington, even if they have only one employee, must allow you to use your available paid leave, such as sick or vacation leave, to care for yourself or a sick family member. This law does not apply to leave needed to care for a newborn child.

Some employers voluntarily provide paid leave for their employees.

Do I Have to Use My Paid Sick Leave or Vacation Leave?

Your employer can require you to use your accrued sick, vacation, or other paid leave during your family leave. Your employer may choose not to require you to use that leave, but you will have to use it if the employer requires it.

Do I Have to Use My 12 Weeks All At Once?

Not necessarily. If you need to take leave in smaller blocks, or work on a reduced hour schedule, in order to be treated for your serious illness or if necessary to care for an ill family member, you can do that. It may require a note from a healthcare provider.

If you want to use your leave in smaller blocks or work on a reduced hour schedule to care for a newborn or newly placed child, you can only do it if your employer agrees.

What Do I Have to Do Before I Take Leave?

There are a few steps you have to take before you leave work.

- Taking leave to care for a newborn or newly placed child: When the birth or placement is foreseeable, you must provide your employer with 30 days notice before your leave starts. If the birth happens unexpectedly or a child suddenly becomes available for placement, you should notify your employer as soon as possible.
- Taking leave to care for yourself or a relative with a serious health condition: You must also provide your employer with 30 days notice when the leave is foreseeable. Often, illnesses happen suddenly. In that case, you must tell your employer as soon as you think you will need the leave. You also have to work with the healthcare provider to try to schedule treatment so that it will not “unduly disrupt” the employer’s operations.

Do I Have to Prove To My Employer That I Need Family Leave?

Your employer has the right to ask you for a written certification of a serious health condition. The certification must include:

- The date when the serious health condition started
- How long it may last
- Relevant medical facts known by the healthcare provider;
- Either a statement that the employee is needed to care for a family member (when applying for leave to care for a family member) or a statement that an employee cannot perform her or his job (when applying for leave because you cannot perform your job)

If the employer disagrees with the medical professional’s determination, the employer may request a second opinion at the employer’s expense. However, the second opinion cannot be made by a healthcare provider that is regularly employed by the employer.

If the two opinions conflict, both the employee and employer must decide on a third healthcare provider who will make a final determination at the employer’s expense.

What Kinds of Illnesses Qualify As “Serious Health Conditions”?

There is no list of illnesses that qualify for family leave. Instead, the law defines “serious health condition” as an illness, injury, impairment, or physical or mental condition that requires either inpatient care or ongoing treatment by a healthcare provider. Some examples of serious health conditions include cancer, severe migraine headaches, and severe depression. However, minor medical problems, such as the common cold, the flu, routine dental problems, or cosmetic treatments, are not covered unless medical complications arise from them.

Can I Take Leave to Care for My Adult Child?

Yes, if the child age 18 or older is incapable of taking care of himself or herself because of a mental or physical disability.

My Spouse And I Work For the Same Employer. Can We Both Take Leave At the Same Time?

If you are both taking leave to care for a newborn child, a newly placed adopted child, or a sick parent, the total number of weeks that you and your spouse may take in any twelve month period is limited to twelve weeks.

However, if you are taking leave for any other reason, you and your spouse can each take a full 12 week leave within a twelve month period.

My Partner And I Are Not Married. If My Partner Is Ill, Can I Take Family Leave To Care for Him or Her?

State and federal law only requires employers to give leave to employees to care for their children, parents, or spouses. It does not apply to domestic partners. Same sex couples, who are still prohibited from marrying each other, are not protected by these laws.

However, many employers and unions provide leave benefits for same-sex couples and/or all domestic partnerships. Likewise, local laws may protect unmarried families who need time off to care for each other.

Anyone, regardless of sexual orientation, is entitled under state and federal law to take time off to care for a seriously ill child or parent.

Will I Keep My Employee Benefits While I'm On Leave?

Usually you will not continue to accrue vacation time, sick leave, retirement benefits, or other benefits that you would have if you were still working. However, an employer of 50 or more employees must maintain the same health insurance you would have received had you been working.

Do I Have to Do Anything While I'm On Leave?

Your employer can ask you to periodically report on your intent to return to work. Your employer may also request recertification of medical conditions on a "reasonable basis" if your leave is to care for yourself or a family member. This means the employer cannot ask you to provide recertification in a way that is harassing or discriminatory.

Will I Get My Job Back When I Am Ready To Return To Work?

Your employer must give you the same or an equivalent job (same pay, benefits, and working conditions) within 20 miles of your previous job when you come back from leave. Your employer cannot fire you for taking family leave as allowed by law. It is illegal for your employer to interfere with your right to take this leave by harassing you, refusing to promote or hire you, or transferring you to a job that is not equivalent to the one you had before you took leave.

However, there is an exception for certain highly paid employees. If you are a salaried employee among the highest paid 10% of the salaried employees within 75 miles of your worksite, an employer may deny you your job if:

1. Returning you to your job would cause a “substantial and grievous economic injury” to the employer; and
2. The employer notifies you at the time this determination is made; and
3. After being notified and while you are on leave, you decide not to return to your job.

What Happens If I Don’t Go Back To Work At the End of My Leave?

If you choose not to go back to work after your leave, you may have to reimburse your employer for the health insurance premium paid during your leave.

If you cannot go back to work because you still need to care for your or your family member’s serious health condition or due to circumstances out of your control, you will not have to pay your employer back for your health insurance premiums. However, in order to prove this, your employer can require you to provide a written certification from a healthcare provider as to the reason you cannot go back to work. If you think that you may not be able to return to work at the end of your leave, you should get a certification in advance just in case your employer requests it.

Can I Be Treated Differently Than Other Employees Because I Am Pregnant?

No. It is illegal for an employer to discriminate against you because you are pregnant. If your employer is discriminating against you because you are pregnant, including refusing to allow you to take family leave, please contact the Washington Human Rights Commission at 1-800-233-3247. For helpful information about pregnancy and parenting leave, please visit www.hum.wa.gov/generalInfo/faq_preg_matern_leave.htm.

What Can I Do If I Believe My Employer Has Violated Family Leave Laws?

You have the right to bring a lawsuit in state or federal court and to file complaints with state and federal agencies that enforce those laws.

Complaint or Lawsuit Under the Federal Family Medical Leave Act

Under the federal Family Medical Leave Act, you must file your complaint or law suit within two years of the last act of discrimination by your employer. If you can prove that the employer willfully discriminated against you, the time period for filing a complaint or lawsuit may be extended to three years.

At the present time, the United States Department of Labor’s Wage and Hour Division will enforce family leave laws in Washington State. To file a complaint, see <http://www.dol.gov/elaws/esa/fmla/fc.asp>. If you are an employee of the federal government,

different agencies may enforce the law. Please visit <http://www.opm.gov/> to learn more about filing a complaint if you are a federal government employee.

Complaint or Lawsuit Under State Laws

If your employer of 50 or more employees violates family leave laws you may file a lawsuit under state law. The general statute of limitations for filing personal injury claims is three years; this applies to the state family medical leave law because it has no specific statute of limitations. However, given the federal time limit and because these laws are so similar, it may be wise to try to file any complaint within the two year statute of limitations required by federal law.

To file an administrative complaint against an employer related to leave beyond 12 weeks for pregnancy or childbirth, you can file a complaint with the Washington State Department of Labor and Industries at <http://www.lni.wa.gov/WorkplaceRights/ComplainDiscrim/default.asp>

If you work for an employer with 8 or more employees, and you were denied pregnancy-related leave or retaliated against for taking it, you can file a complaint with the Washington State Human Rights Commission at <http://www.hum.wa.gov/complaintProcess/index.htm>. These claims must be filed within 6 months of the act of discrimination.

Related legal information memos by Legal Voice:

“Damages and Contingency Fees in Personal Injury and Discrimination Cases”

"Sexual Harassment in the Workplace"

“Termination of Employment”

For further information, you can contact the legal information & referral line at Legal Voice at (206) 621-7691.