

Legal Update Article

Washington Amends Its Paid Family and Medical Leave Act in Response to Pandemic

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The Washington State Legislature has temporarily amended the state's Paid Family and Medical Leave (PFML) Act to create pandemic leave assistance grants for certain employees and employers. Employees and employers cannot apply for these grants until August 1, 2021. This amendment expires on June 30, 2023.

Employee Grants for Pandemic Leave Assistance

Currently, an employee is generally eligible for PFML if they have a serious health condition and worked 820 hours in the qualifying period. This period is the (1) first four of the last five completed calendar quarters or, (2) last four completed calendar quarters immediately preceding the application for leave. However, many employees saw their hours cut in 2020, or lost their jobs entirely, due to the COVID-19 pandemic's economic effects and now cannot show enough hours worked to qualify for PFML.

The temporary amendment does not change the law's "hours worked" requirement or the qualifying period. Instead, it creates a new pandemic leave assistance grant and looks at an employee's hours worked in 2019 and early 2020 — that is, before the COVID-19 pandemic's full effects were felt on the state economy. Accordingly, if an employee seeks PFML with an effective start date for any point in 2021 through March 31, 2022, but does not meet the law's "hours worked" requirement, the employee is eligible for a pandemic leave assistance grant if they either:

1. Worked 820 hours in 2019; or
2. Worked 820 hours during the second through fourth calendar quarters of 2019 and the first calendar quarter of 2020.

An employee is ineligible if they have insufficient hours worked because of employment separation due to misconduct or a voluntary separation unrelated to COVID-19.

The amount of the grant equals the normal PFML benefit, and employees must follow the same rules for receiving PFML. Employees cannot receive a grant for any week in which they have received, are receiving, or will receive unemployment compensation, workers' compensation, or any other applicable federal unemployment compensation, industrial insurance, or disability insurance.

Employer Grants for Pandemic Leave Assistance

The statute currently provides grants to two categories of employers: (1) employers with 150 or fewer employees; and (2) employers with 50 or fewer employees who choose to pay the employer-side PFML premiums. If an employer hires a temporary worker to replace an employee on PFML for seven days or more, the employer may receive a grant of \$3,000. If an employee's PFML creates significant additional wage-related costs, an employer may receive a grant of up to \$1,000 as reimbursement. There are additional rules under this grant program.

Under the temporary amendment, these existing grants for employers with employees on *PFML* are available to employers with employees receiving *pandemic leave assistance grants*. Unfortunately, employers who run their own voluntary plans are not eligible to receive these grants.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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