



Administrative Policy No. 18.31.01

Subject: Family Medical Leave Act, Paid Family Medical Leave, and Parental Leave

Information Contact: Human Resources Division

Authorizing Source: [28 UCS Sec. 2601](#) Family and Medical Leave Act 1993 (FMLA)
[29 C.F.R. Part 825](#), Family and Medical Leave
[Chapter 41.06 RCW](#) State Civil Service
[Chapter 49.12 RCW](#) Industrial Welfare
[Title 50A RCW](#) Family and Medical Leave (PFML)
[Title 192 WAC](#) Employment Security Department
[Title 357 WAC](#) Civil Service Rules
[Chapter 357-31 WAC](#) Holidays and Leave
[Chapter 357-28 WAC](#) Compensation

Effective Date: July 1, 2005

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Approved By: **Original approved by Wendy Long**
Senior Director, Human Resources Division

Purpose

This policy outlines the Department of Social and Health Services (DSHS) requirements for Family and Medical Leave (FMLA) under [28 USC Sec. 2601](#), Paid Family Medical Leave under [title 50A RCW](#) (PFML), and parental leave under [chapter 49.12 RCW](#).

Scope

This policy applies to all DSHS classified employees not covered by a [collective bargaining agreement](#). All provisions of this policy also apply to civil service exempt employees.

Additional Guidance

Administrative policies:

- 18.31.00 holidays and leave
- 18.31.03 shared leave and leave pools
- 18.40 discipline
- 18.67 workplace domestic violence/reasonable safety

- 18.85 breastfeeding in the workplace
 - 18.87 modern and mobile workplace
 - 18.88 infants at work program
 - 18.90 workplace pregnancy accommodation
 - chapter 19.10 travel policies
 - 19.25.09 shared leave
 - 19.25.41 foster parent shared leave program
- [DSHS 03-421](#) leave request
- [DSHS 03-519](#) request to extend annual leave balance over 280-hour maximum

Definitions:

Classified employee: Employees in Washington general service and Washington management service that are subject to the provisions of Revised Code of Washington, [chapter 41.06 RCW](#).

Registered domestic partner: Two adults who meet the requirements for a valid state registered domestic partnership under [RCW 26.60.030](#) and who have been issued a certificate of state registered domestic partnership by the secretary of state's office.

Exempt employee: An employee who is exempt from the civil service rules, [title 357 WAC](#). DSHS exempt positions are those falling under [RCW 41.06.070](#) and [RCW 41.06.076](#).

Program's approved leave submittal method: Depending on the administration or program, the employee must submit their leave request using the [DSHS 03-421 form](#) or use the approved time and attendance reporting system ([Leave Tracker](#) or SILAS).

Policy

A. [Family and Medical Leave Act of 1993 \(FMLA\)](#)

1. The Family and Medical Leave Act (FMLA) of 1993 ([29 U.S.C. 2601 et seq.](#)) and its implementing rules, [29 C.F.R. Part 825](#), provide that an eligible employee must be granted a total of twelve work weeks of absence for qualifying conditions during a twelve-month period.
2. In accordance with 29 C.F.R. Part 825, an employee is eligible for FMLA if they have worked for the state for at least 12 months and for at least 1,250 hours during the previous 12-month period. Paid time off and unpaid leave are not counted toward the 1,250-hour eligibility requirement.
3. An eligible employee is entitled to leave under FMLA for a qualifying condition as set forth in the federal law and outlined in [WAC 357-31-525](#).

4. The employer designates absences as FMLA qualifying and provides the employee with notice of such designation. Paid or unpaid leave used for a FMLA designated absence is counted toward the twelve weeks of the FMLA leave entitlement. Once FMLA is designated for a qualifying condition and an employee uses FMLA for that condition, the FMLA designation remains in effect for any absences related to the FMLA qualifying condition, including where the employee subsequently qualifies for PFML.
5. If an employee is going to decline a FMLA designation, they must do so at the time the leave is designated as FMLA qualified.
6. An employee may be required to provide a certification from a health care provider to support their FMLA qualifying condition.
7. When an employee takes leave for a FMLA qualifying condition they are required to use the appropriate FMLA leave code. Employees may choose to use paid or unpaid leave for their FMLA qualifying absence. If an employee is unable to enter the leave codes and all efforts have been exhausted to contact the employee for clarification prior to payroll cut-off, the appointing authority or designee, including a supervisor, may choose whether to use paid leave or leave without pay when the employee is absent for a FMLA qualifying absence. When choosing whether to enter paid leave or leave without pay, decide based on the greater benefits or protection for the employee.
8. An employee's request to take FMLA leave intermittently or on a reduced leave schedule must be granted under certain circumstances as outlined in the federal law and [WAC 357-31-545](#). FMLA leave taken for baby bonding or placement may only be taken on an intermittent or reduced leave schedule if approved by the employer.
9. Upon returning from a FMLA absence, the employee must be returned to the same or equivalent position held prior to the absence, unless an exception exists as outlined in federal law.
10. The employer must continue an eligible employee's existing employer-paid health insurance benefits while the employee is on FMLA as required by the federal law. The employee is responsible for any existing employee-paid premiums necessary to maintain health insurance benefits.

B. Paid Family Medical Leave

1. Washington workers who need leave for a serious health condition, to care for a family member, to welcome a new child into the employee's family or for a military-related event [may apply for paid leave](#) through the Employment Security

- Department (ESD) Paid Family Medical Leave Program (PFML) under [title 50A RCW](#). ([WAC 192-500-035](#), [WAC 192-610-005](#)).
- a. PFML and FMLA are separate entitlements. DSHS cannot interfere with, restrain, or deny an employee's use of PFML ([WAC 192-570-020](#), [WAC 192-610-075](#)).
 - b. PFML and FMLA leave is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth. [RCW 50A.15.110](#).
 - c. PFML and FMLA run concurrently when they are for the same qualifying condition.
2. PFML functions as a partial wage replacement insurance program ([RCW 50A.05.005](#)). The PFML program is administered by ESD. The program is funded by premiums paid by employees and employers, ([RCW 50A.10.030](#), [WAC 192-510-065](#)). Employees file a weekly claim to receive payments through ESD ([WAC 192-620-010](#)). Payment is based on a percentage of the employee's weekly earnings, and is determined and administered by ESD ([WAC 192-630-015](#), [WAC 192-610-051](#)).
 3. An employee is eligible for PFML if the employee has worked at least 820 hours for a Washington state employer during the qualifying period and experiences a qualifying event. ESD determines if an employee-qualifies for PFML based on their application. [WAC 192-630-015](#).
 - a. Qualifying events as described in WAC 192-500-800 include:
 - i. Family leave events as defined in [RCW 50A.05.010](#).
 - ii. Medical leave events as defined in [RCW 50.05.010](#).
 - b. Family members, for purposes of PFML, are defined in [RCW 50.05.010](#), ESD may request documentation or information regarding family relationship under [WAC 192-610-035](#)
 - c. An eligible employee may take up to 12 weeks of PFML within a claim year. In some instances, an employee may qualify for up to 16 or 18 weeks a year for applicable multiple qualifying events and pregnancy complications. ESD determines the total PFML leave entitlement ([WAC 192-610-010](#), [WAC 192-610-055](#)).
 4. An employee must use the PFML leave code when they claim PFML benefits for their absence.
 5. An employee may use vacation leave, sick leave, personal holiday, compensatory time, or holiday pay as a supplemental benefit.
 6. An employee must provide their appointing authority or designee with a written notice of a PFML absence within 30 days of a foreseeable absence ([WAC 192-600-005](#)). Written notice includes an e-mail or a written letter. If the PFML absence is

- unforeseeable, then an employee must provide written notice to the immediate appointing authority or designee as soon as practicable ([WAC 192-600-010](#), [WAC 192-600-015](#)).
7. The written notice must include the planned start date of the PFML absence, the expected duration and frequency of the PFML absence, and the intended return to work date ([WAC 192-600-020](#)).
 8. The employee must inform their immediate supervisor as soon as practical if dates of the leave change, are extended, or were initially unknown.
 9. Employees should provide a copy of the written notice of their PFML absence to their [HRD consultant](#), to allow DSHS to coordinate payroll/leave with ESD determination. DSHS will access ESD systems to verify this information ([WAC 192-610-060](#)), which may be time-delayed.
 10. DSHS may require an employee on leave to periodically report on their status and intention to return to work.
 11. An employee is entitled to job restoration upon returning from a PFML absence, if the employee has been employed by the state of Washington for at least 12 months and has worked for the state of Washington for at least 1,250 hours in the 12 months immediately preceding the start of the PFML absence subject to the exceptions under [WAC 192-700-010](#).
 12. An employee taking at least one day of FMLA concurrent with PFML is entitled to continuation of health benefits. The employee is responsible for any existing employee-paid premiums necessary to maintain health insurance benefits.

C. Parental leave

1. Permanent employees or employees who have worked for the state for at least 12 months and for at least 1250 hours during the previous 12-month period are qualified for parental leave.
2. Upon request by a qualified employee, parental leave must be granted for the birth and care of a newborn child of the employee or placement of a minor/dependent child with the employee for adoption for foster care. [WAC 357-31-460](#).
3. To request parental leave, the employee must submit a request in writing to their appointing authority or designee at least 30 days prior to the requested leave, except when the child's birth or placement will happen sooner. The employee must give written notice as soon as practical.

4. Qualified employees are entitled to up to six months of parental leave. DSHS may only deny requests for that portion of the parental leave that exceeds the employee's leave entitlement under FMLA, and such denial must be due to operational necessity. Where the employee's request exceeds the 12 weeks allowed under FMLA, the appointing authority or designee must respond in writing to the employee within ten working days of receiving the request. If the request is denied, the reasons supporting the organization's business needs must be provided. DSHS may approve parental leave requests for more than six months.
5. Consistent with [RCW 50A.15.110](#), parental leave under [Title 50A RCW \(PFML\)](#) and FMLA is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in [WAC 357-31-500](#). See also DSHS administrative policy [18.90](#) workplace pregnancy accommodation.
6. Parental leave may include both paid and unpaid leave. [WAC 357-31-490](#).

ⁱ Housekeeping to update language in A.7. to clarify process