**ESD Agency Request Legislation**

**Paid Family and Medical Leave**

**Technical Amendments**

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***August 2018***

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| **Summary** |
| Amendments to the Paid Family and Medical Leave (PFML) Act are needed to improve customer experience and avoid unneeded adverse impacts on employers and employees. Several technical corrections are also essential for proper implementation of the law. This document provides a high-level overview of these amendments. The Employment Security Department (ESD) will work with the PFML Advisory Committee on each proposal to ensure there is agreement prior to introducing legislation.  |
| **Employment benefits** |
| The definition of “employment benefits” in RCW 50A.04.010(8) contains language from the original 2007 version of the Paid Family Leave law, which creates an unintentional exemption for benefits provided by an employer’s practice or written policy. Unfortunately, this exemption would likely result in all employment benefits being exempt from the sections of the law that address employment benefits. ESD suggests striking this language to prevent confusion and to maintain the original intent of the legislation under the employment protections and remedies sections relating to when employees take leave.

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| **Taxable wage base** |
| The definition of “wage” in RCW 50A.04.010(24), as it relates to premium assessments and benefit calculation, must be clarified. The PFML Act uses part of the definition of “wage” from the definition in Unemployment Insurance (UI) in RCW 50.04.320(2). As a result, the definition only refers to benefit payments and causes unintended consequences, which will result in significant additional burdens to employers, employees, and the department. ESD recommends revising the law to remove the reference to UI law and simply defining wages and remuneration as intended for PFML. |

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| **Duplication of benefits** |
| The PFML Act directs ESD to prevent duplication of benefits for employees who are simultaneously covered by a voluntary plan and the state plan. Current law does not allow employees who are covered by a voluntary plan at the time they begin taking leave to receive benefits from the state PFML program (see RCW 50A.04.600(4)). The PFML Advisory Committee seeks to have employees claim under the plan for which they have the most hours in the qualifying period.  |

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| **Benefit garnishments by private entities** |

In RCW 50.40.020, UI law prohibits private entities from assigning or attaching unemployment benefits to garnishments or liens. This provision is required by federal law for unemployment. ESD proposes adding this provision to the PFML law to help protect individuals from having their family and medical leave benefits assigned to garnishments or liens.

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| **Voluntary plan appeals** |

For PFML participants covered by a Voluntary Plan, RCW 50A.04.660 provides limited appeal rights. Although employers have the right to appeal any decisions from ESD, employees under a voluntary plan are only permitted to appeal an employer’s denial of liability for PFML benefits. This leaves many decisions by voluntary plan employers related to employees’ claims exempt from the administrative review and the appeal process. In contrast, employers and employees participating in the state plan can appeal a wide variety of issues. The agency recommends making appeal rights consistent between state plans and voluntary plans to ensure equity and access to justice for all participants.

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| **Voluntary plan employer flexibility** |

The employee eligibility requirements for approved Voluntary Plans in RCW 50A.04.610 do not grant employers the flexibility to offer more generous benefits than employees would receive in the state plan due to hourly eligibility requirements. RCW 50A.04.610(1) states that “[a]n employee qualifies for benefits under an employer's voluntary plan only after the employee works at least three hundred forty hours for the current employer.” The inclusion of the word “only” requires employees to have worked 340 hours for that employer before they can enter the employer’s voluntary plan. ESD proposes amending the law to allow employers with approved voluntary plans to allow employees into their voluntary plan without first meeting the 340 hour requirement, should the employer chose to do so.

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| **Child support obligation** |

The PFML Act directs ESD’s handling of employee PFML benefits when the employee owes child support. When employees owe child support ESD is required to withhold child support from an employee’s benefit payments only if the employee voluntarily tells the agency they owe child support (see RCW 50A.04.035, RCW 50A.04.060). ESD supports amending these sections to give the agency the express authority to perform cross-checks against Department of Social and Health Services records and to withhold child support with or without the employee’s voluntarily disclosure of the obligation.

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| **Non-charging UI benefits**  |

The PFML Act added language to the UI law to allow an employer, who hires a replacement worker to fill in for an employee who is taking PFML benefits, to apply to have any UI benefits paid to the replacement worker once they are laid off “non-charged” so the employer’s UI experience rating does not increase (see RCW 50.29.021). These “non-charged” benefits will ultimately be paid by a transfer from the PFML insurance account to make the UI Trust Fund whole. The added language incorrectly references an “employee receiving family or medical leave benefits under this chapter,” which technically refers to unemployment compensation benefits. It should reference benefits received under Title 50A.04 RCW, the PFML Act.ESD proposes amending the language to correctly refer to the PFML Act.

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| **Recodification** |

The PFML Act is codified into a single chapter within Title 50A RCW. Recodifying the law into multiple chapters would make it easier to read and navigate. For example:1. All sections of the law that relate to appeals would be recodified under a chapter dedicated to appeals;
2. All definitions would be placed into their own chapter; and
3. All sections of law related to discrimination, complaints, and the payment of damages therefrom would be placed into a single and exclusive chapter.
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