

Voluntary Plan Guide

In July 2017, the Washington State Legislature passed bipartisan legislation to create a statewide Paid Family and Medical Leave program.

This program, currently being developed and administered by the Employment Security Department (ESD), requires all Washington employers, with few exceptions, to provide paid family and medical leave benefits to their employees beginning in January 2020. An employer can offer these benefits through the state plan or an employer-operated voluntary plan.

This guide is intended to give you information you need to prepare and apply for a voluntary plan. For more information about the Paid Family and Medical Leave program, [please visit our website](#).

If you need assistance, please contact us at paidleave@esd.wa.gov. Our Customer Care Team will be ready to answer your phone calls August 16, 2018.

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Timeline

August, 2018

- Guide Published
- Customer Care Team taking calls. (8/16/18)

September 17, 2018

- Voluntary plan applications available

September 31, 2018

- Guide revised with new information

November 30, 2018

- Guide revised with new information

December 31, 2018

- Final day for application determination before premiums begin

January 1, 2019

- Premium collection begins



Is a voluntary plan right for my business?

When considering a voluntary plan, note:

- Voluntary plans must meet or exceed state plan benefits in all aspects, including the requirement to cover all your employees.
- They may not include restrictions not allowed under the state plan. Examples include restrictions based on age, pre-existing conditions, gender, etc.
- You may hold a voluntary plan for either family leave, medical leave, or both. For example, if your business has an existing qualifying temporary disability policy, you may turn it into a voluntary plan for medical leave. Your employees will then be covered by the state plan for family leave.
- Voluntary plans must be approved by ESD before they are offered to employees.
- Reporting to the state is still required for voluntary plan employers, the requirements of which are different from the state plan. There are also unique employee eligibility requirements that are different from the state plan. Details on these requirements are included in this guide.
- You are not required to implement a voluntary plan to provide additional benefits to your employees that exceed the state plan. An employer can offer to pay the employee's portion of state plan premiums, for example, if they felt the need to do so for competitive reasons.

Paid Family and Medical Leave

Voluntary Plans August 2018

Quick Facts

- Voluntary Plans are employer operated paid family and/or medical leave insurance programs
- They must meet or exceed state plan benefits
- They must be approved by the Employment Security Department before they are offered to employees
- They have unique reporting requirements that are different from state plan reporting requirements
- They have unique employee eligibility requirements that are different from state plan eligibility requirements

Application Overview

Voluntary plans are available to employers who wish to operate their own paid family and/or medical leave programs. Employers must apply and be approved to operate a voluntary plan. Applications can be submitted through a website, which is under development and expected to become available in late summer 2018.

Employers who have applications approved by December 31, 2018 will not be required to collect state plan premiums with the first paycheck in January 2019. This application process is new, and while we expect the turnaround on approvals to be relatively quick, as of August 2018 no applications have been submitted so the amount of time review will take is to be determined.

Please note, if a voluntary plan is denied there is an appeal process available, but until a voluntary plan is approved employers must participate in the state program and pay premiums as required.

Administrative Requirements

Reporting

Paid family and medical leave benefits are portable between jobs, and employee eligibility is based on hours worked, not money paid into the state Paid Family and Medical Leave account. Therefore, quarterly reporting is necessary for voluntary plan employers so that employees have a record of their total hours worked in the event they move to a business covered under the state plan.

Voluntary plan employers should prepare to report quarterly the following information for each employee:

- Full name
- Social Security number (ITIN if no SSN)
- ZIP code of primary work location
- Job title
- Start date
- Wages paid during that quarter
- Total hours worked during that quarter

And generally:

- Weekly benefit and leave duration for any employee who takes leave for reasons that would qualify under the state plan at the time of leave taken.
- Total premiums deducted from all employees' wages during the calendar quarter.

The reporting tool is under development and will be available for the first required quarterly reporting in April 2019.

Family Leave and Medical Leave

There are two parts to Paid Family and Medical Leave: family leave and medical leave. An employer can choose a voluntary plan that covers just family leave, just medical leave, or both.

Family leave covers events like the birth of a baby or the adoption or placement of a child younger than 18, the care for a family member and some [military-connected events](#).

Family members who are eligible for care are children, grandchildren, parents, grandparents, siblings, or spouses. Military connected events are the same as the rules in the Federal Family and Medical Leave Act (FMLA).

Medical leave covers self-care for the employee's qualifying event. Qualifying events are serious medical conditions, [as defined in the law](#). Medical leave is sometimes called short-term or temporary disability.

If an employer chooses to operate one part and not the other, the employees of that business will use the state plan for the part not chosen. The employer must meet the requirements of the state plan for the option not chosen in addition to operating their voluntary plan.

Employee Contributions Held in Trust

Employee contributions to a voluntary plan must be held in trust. This includes interest or other income arising from these contributions from an approved voluntary plan. These funds held in trust are not considered part of an employer's assets and must be held in a separate, specifically identifiable account in a financial institution.

If an employer withdraws their voluntary plan, funds held in trust must be remitted to the department, less plan costs.

Third-Party Administration

Voluntary plan employers have the option to work with a third party to operate their voluntary plan. If an employer chooses to work with a third party, the employer still carries the legal burden of satisfying the requirements of the program.

An employer's application should be submitted, and agreed to, by the applying employer.

Frequency of Benefit Payment

A voluntary plan must pay benefits to employees at least as often as normal pay, and no less often than monthly.

Accelerated Payment Offer

A voluntary plan employer may incentivize an employee to return to work early. These employers can offer an accelerated payment schedule where they pay the monetary benefit the employee is entitled to in a shorter period of time, allowing the employee the choice to return earlier than expected.

For an offer to meet the requirements of the law, an employer must offer at least half the entitled amount of time for leave, then compensate the employee the benefit amount they would've received had they taken the entire amount of leave.

For example, an employee could intend to take 10 weeks of Paid Family and Medical Leave. The employer could offer eight weeks of paid leave and the compensation of the final two weeks when they return to work. If the employee accepts this offer, they would be out of work for eight weeks and receive the compensation of 10 weeks.

The decision to accept this offer from an employer is entirely the employee's. This accelerated payment option is only available to voluntary plan participants.

Posting & Providing Notice

Voluntary plan employers must post notice of the Paid Family & Medical Leave program and filing of complaints related to it. It must be in a common area where employee notices are customarily posted.

ESD will make available a standard notice and/or employers may develop their own notice if it meets the requirements of the law. You can learn more about the requirements of these notices on our [website](#).

Failure to post this notice may result in a penalty of \$100 per instance in which ESD determines the employer willfully failed to post this notice.

An employer must provide written notice of

employee rights when they become aware that an employee is taking leave that would qualify for Paid Family & Medical Leave for at least seven consecutive days. If an employee has taken 7 days for a qualifying reason, the employer has 5 business days to provide notice of Paid Family & Medical Leave benefits.

Penalties

A voluntary plan employer who is found in violation of the law will be assessed the following penalties:

1. \$1,000 for the first violation
2. \$2,000 for the second violation and subsequent violations

ESD will waive the collection of the penalty if the employer corrects the violation within thirty days' notice of the violation and it is the first violation.

The Commissioner of ESD may waive collection of penalties if they determine the violation to be unintentional.

An employer may appeal a decision they disagree with and an employee may appeal an employer's denial of benefits under an approved plan.

Benefit Requirements

To be approved, voluntary plans must meet or exceed the state plan in the following benefits:

- Eligibility
- Premium deduction amount
- Leave duration
- Weekly benefit
- Job protection
- Maintenance of health benefits

The following chart illustrates the difference in requirements by family leave plan, medical leave plan, or both.

Guideline	State Plan	Voluntary Plan Medical Leave	Voluntary Plan Family Leave	Voluntary Plan Both Family & Medical Leave
Employee Eligibility	Covers All Eligible Employees	Covers All Eligible Employees	Covers All Eligible Employees	Covers All Eligible Employees
Employee Premium Amount	0.4% Gross Wages * (.3333 + .3000)	(.4% * .3000) of gross wages or less	(.4% * .3333) of gross wages or less	0.4% Gross Wages * (.3333 + .3000) or less
Leave Duration	Up to 12 weeks of family or medical leave, plus 2 weeks if leave results from pregnancy complications. Up to 16 weeks in combination of family and medical leave, plus 2 weeks if leave results from pregnancy complications.	Up to 12 weeks of medical leave, plus 2 weeks if leave results from pregnancy complications	Up to 12 weeks of family leave	Equal to or more than state plan
Weekly Benefit	Wage replacement based on weekly average wage	Equal to or more than state plan by weekly average wage calculation	Equal to or more than state plan by weekly average wage calculation	Equal to or more than state plan by weekly average wage calculation
Job Protection (for employers with 50 or more employees)	Employee worked for 12 months with employer, worked 1,250 hours during the year	Employee must work 9 months and 965 hours for that employer for 12 months preceding the date leave will begin, in addition to state plan requirements	Employee must work 9 months and 965 hours for that employer for 12 months preceding the date leave will begin, in addition to state plan requirements	Employee must work 9 months and 965 hours for that employer for 12 months preceding the date leave will begin, in addition to state plan requirements
Health Benefits While on Leave (for employers with 50 or more employees)	Must maintain health benefits while on leave in accordance to FMLA	Must maintain health benefits while on leave in accordance to FMLA	Must maintain health benefits while on leave in accordance to FMLA	Must maintain health benefits while on leave in accordance to FMLA

Eligibility

A voluntary plan must cover all current and future employees of an applying employer.

Employees are eligible for benefit payments under an approved voluntary plan once they have worked 820 hours in the qualifying period and 340 hours for that employer. Employees who are not yet eligible for coverage under an approved voluntary plan are eligible for benefits under the state plan if they have worked 820 hours in the qualifying period.

The qualifying period is the first four of the last five completed calendar quarters from the date leave begins.

If an employee was covered under a voluntary plan by their previous employer, they are immediately eligible for their new employer's voluntary plan.

Benefit Eligibility Restrictions

The requirement for benefit eligibility in the state plan is working 820 hours in the qualifying period. Voluntary plans must match this requirement* and cannot add additional hurdles to eligibility. Your application will not be approved if it restricts benefit eligibility for reasons like age, gender, race, preexisting conditions, job title, etc.

*By statute, voluntary plans require an employee to also work 340 hours for the voluntary plan employer in the qualifying period to be eligible for benefits.

Premium Amount

The state plan premium will be 0.4 percent in 2019. These state plan premiums are divided into portions for Family Leave and Medical Leave. The family leave portion is 1/3 of the total premium, and the medical leave portion is 2/3.

In an approved voluntary plan, there are no employer premium requirements.

A voluntary plan employer can withhold the

equivalent of 100% of employee's portion of the family leave premium. This premium must be equal to or less than:

$$0.4\% \text{ of gross wages} * .3333.$$

A voluntary plan employer can withhold the equivalent of 45% of an employee's portion of the medical leave premium. This premium must be equal to or less than:

$$0.4\% \text{ of gross wages} * .3000$$

A voluntary plan can not withhold more than:

$$0.4\% \text{ of gross wages} * (.3333 + .3000)$$

Leave Duration

The state plan offers up to 12 weeks per year of family or medical leave, plus two weeks if the leave is due to pregnancy complications that result in incapacity. There are 16 weeks per year available for a combination of family and medical leave, and again an additional two weeks if the leave results from a pregnancy complication.

A voluntary plan must meet or exceed these maximum leave durations. If a voluntary plan covers only family leave, the maximum leave duration must be 12 weeks or more.

If a voluntary plan covers only medical leave, the maximum leave duration must be 12 weeks or more, plus two weeks if the leave is a result from pregnancy complications.

If a voluntary plan covers both family and medical leave, it must include a maximum leave duration of 16 weeks or more, plus two weeks if the leave is a result from pregnancy complications, in combination of both kinds of leave.

Weekly Benefit

The weekly benefit of the state plan is calculated using the following method:

First, find the weekly average wage of the employee by taking the total wages over the two highest quarters during the qualifying period and divide by 26.

Second, determine if the weekly wage is greater than ½ the state average, \$595 in 2017. If the employee's average weekly wage is below ½ the state average, the employee's weekly benefit is 90 percent of their average weekly wage. The state's average weekly wage is recalculated each June, and employers should expect this number to change accordingly.

If the employee's average weekly wage is greater than ½ the state average, first calculate 90 percent of the employee's average weekly wage, capped at the state average. This is the first number.

Then take 50 percent of the employee's average weekly wage that is above ½ the state average weekly wage. This is the second number. Add the first number and the second number together, and the result is the weekly benefit amount.

A voluntary plan must meet or exceed the benefit calculated for each employee.

Job Protection

Job protection is available to employees if their voluntary plan employer has 50 or more employees. The employee must work for nine months with that employer and 965 hours for that employer during the 12 months preceding the date leave will begin.

When the employee returns from leave, they are entitled to:

1. Return to a position of employment held by the employee when leave commenced; or
2. Return to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

Using the voluntary plan benefits can't result in the loss of employment benefits accrued before leave begins, or any other right, benefit or position of employment the employee would have been entitled to if they had not taken leave.

An employer can, as a matter of policy:

1. Request from the employee certification by the employee's health-care provider that the employee can resume work, as long this policy is uniformly enforced.
2. Require periodic reporting from the employee about their status and intention to return to work.

An employer may deny job protection to a salaried employee who is among the highest paid 10 percent of employees within 75 miles of the facility they work in if:

1. Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; and
2. The employer notifies the employee of the intent of the employer to deny restoration on this basis at the time the employer determines that the injury would occur; and
3. The leave has commenced and the employee elects not to return to employment after receiving the notice.

A voluntary plan must meet or exceed all provisions in this job protection section.

Health Benefits

A voluntary plan employer must extend access to health benefits, in accordance with the federal Family and Medical Leave Act (FMLA), while an employee is on leave.

FMLA: Employers must maintain coverage under any group health plan for the duration of leave and at the same level and conditions coverage would have been provided if the employee hadn't taken leave.

Application Process

The Voluntary plan application process is being developed during summer 2018. Applications will be submitted through an online website. Applications are expected to be available in September 2018.

We expect some changes to this process throughout 2018. Please use these guidelines to prepare, and please check our [website](#) for up-to-date information. You are also encouraged to sign up for our [newsletter specific to voluntary plan information](#) and updates.

Before Applying

An employer who chooses to apply for a voluntary plan will need to develop a program that meets or exceeds the state plan. Before you start the application process, you should have a voluntary plan that meets this requirement.

You will need a UBI and business name to apply for a voluntary plan. A FEIN is optional.

While Applying

The voluntary plan application is organized in a series of questions about your plan. Provided you have all the information prepared ahead of time, the application submission process is short. NOTE: This is new technology that will increase in sophistication and features over the coming months. As of August 2018, the website only allows for one login per application. Multiple administrative accounts cannot be linked to the same application, so please designate one person to submit the application through the website.

The fee for applying for a voluntary plan is \$250. Your application will not be considered complete until you have completed the fee payment. You can pay by credit/debit card or check through the secure payment gateway at the end of the application process.

After Accepted Application

Once a voluntary plan is approved, it will go into effect on the first day of the following calendar quarter. A voluntary plan must be in

place for at least one year after it has been accepted.

You will need to have your plan reapproved each year for the first three years. After three years, you'll need to reapply only if you make a change that is not legally required. Reapproval in these first three years doesn't require additional payment.

If you are operating a voluntary plan, your employees will file claims for benefits directly with you or your designated third-party agent. It is important to remember that the employer bears the responsibility under this law, regardless of whom it has delegated operation.

All reporting requirements of the state plan, which include wages and hours worked for all employees, will still be required of voluntary plan operators. Additionally, voluntary plan operators are required to report weekly benefit use and leave information for employees who take leave.

Voluntary plans are subject to audits to confirm the maintenance of the plan.

What if your application is denied?

If your application for a voluntary plan is denied, your business must participate in the state plan. There is no penalty for being denied a voluntary plan. Your application fee is not refundable. Denials may be appealed within 30 days, and more information about the appeal process will be available in late 2018.

Ending a Voluntary Plan

A voluntary plan must be in place for at least one year after it has been accepted.

Withdrawing A Voluntary Plan

A voluntary plan can be withdrawn by an employer with 30 days' notice. The plan is then withdrawn at the beginning of the next calendar quarter. If the end of the calendar quarter falls within the 30 days of notice, the plan will be withdrawn the following calendar quarter. When the plan is withdrawn, the employer must pay the department any money held by the voluntary plan, including premiums paid by employees, money owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued.

Termination of a Voluntary Plan

ESD may terminate a voluntary plan. If the department terminates a voluntary plan, the department will calculate the amount owed by the employer and send an invoice for payment due immediately. Interest will be charged after 30 days.

Good cause reasons for terminating a voluntary plan include failure to:

- Pay timely and accurate paid family and medical leave benefits
- Provide leave for a qualified event
- Protect the employment and employment benefits of an employee when required
- Provide complete quarterly reports
- Report to the department any changes to the plan
- Adhere to the approved plan
- Adhere to the requirements of the law.

How Do I Appeal?

To appeal a decision, you must write a letter to the Employment Security Department.

Your letter must include:

1. A statement indicating this letter is an appeal to a decision made by the Employment Security Department.
2. The decision you are appealing, the reason

you disagree with the decision, and with supporting information if applicable

You must also include:

1. Your business name, address and phone number.
2. Employer-authorized representative signature. We will return any unsigned appeals.

Mail or fax the letter to:

Employment Security Department
Paid Family and Medical Leave Care Center
P.O. Box 84249
Olympia, WA 98507
Fax: 833-535-2273

After we receive an appeal:

- We will send the appeal and all information we have about this decision to the Office of Administrative Hearings (OAH), which will schedule a hearing.
- OAH will send a Notice of Hearing to you about the hearing date and time. OAH will hear the case and make a determination on your appeal.

Application Questions

The questions below are provided to help you submit your application. Please keep in mind that the questions or format of the application may change.

This application asks questions regarding your business's voluntary plan. Answer each question, selecting the answer that accurately reflects your business's voluntary plan.

When choosing an answer that might depend on an employee's job title, wage, or other criteria, submit the answer that corresponds to the minimum benefits given to all your employees.

You will be asked to upload your Paid Family & Medical Leave policy documents at the end of the application. You can upload up to 10 files, with a file size limit of 5MB each. Acceptable file types are: .pdf, .doc, .docx, .xls, .xlsx, .tif, .tiff, .jpeg, .jpg, .png.

You must complete this application in one session or start over in a new session, noting that your answers will not be saved. Also, you must pay the \$250 application fee for your application to be considered complete. Partial applications will not be evaluated.

Question Number	Question
1	What kind of paid leave plan will you offer?
2	Will all of your Washington employees, including full-time, part-time, permanent or temporary employees, who work at least 820 hours in a qualifying period, with at least 340 of those hours in your employment, be eligible for benefits under your plan?
3.a	What is the minimum duration of paid weeks your plan makes available to employees during a period of 52 consecutive calendar weeks?
3.b	What is the minimum duration of paid weeks your plan makes available to employees for combined paid family and medical leave during a period of 52 consecutive calendar weeks?
3.c	How many weeks will your plan allow paid medical leave to be extended if an employee experiences complications from pregnancy which results in incapacity?
4	Will your plan provide employees paid leave if they are unable to work due to a serious health condition?

Question Number	Question
5	Will your plan provide employees paid leave to provide care, including physical or psychological, to a family member with a serious health condition?
6	Will your plan provide employees paid leave to care for a grandchild, grandparent, parent, or sibling with a serious health condition?
7	Will your plan allow employees paid leave to care for their husband or wife, or state registered domestic partner with a serious health condition?
8	Will your plan provide employees paid leave to care for a child with a serious health condition whether biological, adopted, foster, step, or a child of whom the employee has legal guardianship over regardless of age or dependency status?
9	Will your plan provide employees paid leave to bond with a child during the first 12 months after the child's birth, or the first 12 months after placement of a child under the age of 18?
10	If an employee's spouse, child, or parent is a current member of the Armed Forces (including the National Guard and Reserves) and is on covered active duty or notified of an impending call or order to covered active duty, will the employee be eligible for paid family leave under your plan?
11	Will your plan pay benefits that are greater than or equal to the states plan to your eligible employees?
12	Do you intend to withhold premiums from your employee's wages?
13	Do you have 50 or more employees?
13.a	Will you protect the job of an employee on leave who was employed with your business at least 9 months and 965 hours in a 12-month period before the leave began?
14	Do you currently provide employees with health benefits?
14.a	Will you continue to provide the same health benefits while the employee is on leave as long as they can maintain their share of the employee's cost of medical premiums?

Contact Information

Our website

esd.wa.gov/paid-family-medical-leave

Our email address

paidleave@esd.wa.gov

Our rulemaking site

esd.wa.gov/paid-family-medical-leave/rulemaking

Ask us to attend your event

esd.wa.gov/paid-family-medical-leave/outreach

Voluntary Plan Guide Feedback

We value your feedback and will use it to improve this guide. Please use our voluntary plan feedback form: <https://www.surveymonkey.com/r/QMDMVBB>

Version Control

Current Version: 1.1

1.1 Updates (8/16/18)

- Correction to the premium amount section of the Benefit Requirements chapter.
- Added feedback form to contact information.

1.0 First Release