

# HR COMPLIANCE BULLETIN

## Washington State Amends Paid Family and Medical Leave Law

Washington state has [amended](#) its paid family and medical leave (PFML) law. Some of the changes took effect in March 2020, while others go into effect on June 11, 2020.

Nearly all Washington employers are covered under the paid family and medical leave program, which began providing benefits to eligible employees in January 2020.

Among the changes made by the amendments are alterations to the law's definitions—for example, who counts as a child for PFML purposes, and the addition of a definition and exemption for casual labor.

The amendments also change the waiver for out-of-state workers, and they contain provisions about employees' receipt of payments like paid time off (PTO) during the waiting period and during the leave itself. The changes additionally clarify when the PFML waiting period begins.

A new private right of action was added, allowing employees to sue employers for alleged violations of the law, but a three-year time limit was imposed on agency investigations, dating from the time the alleged violation occurred to the time of the complaint.

### Action Steps

Employers should become familiar with the new amendments and the dates they go into effect. Employers should also review their current policies and make any changes necessary to ensure timely compliance with the PFML law as amended.

### Highlights

#### New Amendments Affect PFML Definitions

"Child" now includes a child's spouse. The amendments also added an exemption and definition for "casual labor."

#### Waiver Language Changed

Employees must work primarily out of state for the waiver to apply.

#### Employee Right to Sue

The amendments create a private right of action for employees to sue employers over alleged violations of the law.

### Important Dates

#### Jan. 1, 2020

Employees became eligible for paid family and medical leave benefits.

#### March 25, 2020

The first of the amendments took effect.

#### June 11, 2020

The remaining amendments go into effect.

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## Background

The Washington state Paid Family and Medical Leave (PFML) program applies to virtually all Washington employers, regardless of size. Employees who have worked 820 hours during a “qualifying period” (usually the first four of the last five calendar quarters) are eligible for up to 12-18 weeks of paid leave per year for specified reasons. Eligible employees began receiving benefits under the program on Jan. 1, 2020.

Compensation is based on a sliding scale, with workers receiving up to 90% of their average weekly wage, subject to a statutory pay cap. The program is funded with employer and employee payroll contributions; however, employers with fewer than 50 employees are not required to pay the employer contribution.

## Amendments

The recent amendments to the PFML program include the key changes outlined below. Some of the amendments took effect immediately upon passage on March 25, 2020, while others do not go into effect until June 11, 2020, as indicated.

### *Definitions*

One of the law’s permitted reasons for taking PFML is to participate in providing care for the employee’s family member due to the family member’s serious health condition. “Family member” for this purpose includes the employee’s child. The amendments expand the meaning of “child” to include a child’s spouse.

The new changes also create an exemption for “casual labor,” defined as work performed no more than 12 times per calendar quarter, not on a “consistent cadence,” and, if performed for an employer, not promoting or advancing the employer's customary trade or business.

These amendments took effect on March 25, 2020.

### *Waiver for Out-of-State Employees*

The PFML law allowed employers to file a waiver for employees who are physically based out of state. The amendments change the waiver language to apply instead to employees who primarily perform work outside of the state.

This change takes effect on June 11, 2020.

### *Employee Receipt of PTO and Salary*

The amendments provide that employees may receive PTO during the statutory seven-day waiting period for PFML benefits, and clarify that the waiting period begins the previous Sunday of the week when the employee takes leave. The amendments also provide that an employee may receive salary and PTO, if offered by the employer, while receiving paid family or medical leave benefits.

These changes take effect on June 11, 2020.

### *Enforcement*

The amendments grant employees a private right of action against employers for violations. Investigations of alleged violations by the Employment Security Department are limited to those that occurred within three years of the complaint.

These changes become effective on June 11, 2020.