

Guiding Managers & Supervisors Through the Leave Maze

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Additional Resources: *To obtain electronic copies of sample forms and letters from Bellevue and Community Transit regarding various FMLA situations, contact Carol Greene at AWC, e-mail Carolg@awcnet.org*

- i. Washington employers returning an employee to the workplace after a family or medical leave must do so to a workplace within 20 miles of the employee's workplace when the leave commenced.
 - ii. FMLA leave must be granted **in addition** to leave due to sickness or disability because of pregnancy or childbirth.
 - b. Maternity Leave: Washington's Law Against Discrimination requires an employer to provide a pregnant employee a leave of absence for the period she is temporarily disabled due to pregnancy or childbirth.
 - i. **NOTE** - Under state law, Family and Medical Leave benefits are in addition to maternity disability leave benefits.
 - ii. **NOTE** - Even if an employer is not legally required to provide family leave, if an employer provides leave to a woman to care for a newborn (as opposed to disability leave), it also must provide the same benefit to men and parents of stepchildren to avoid a charge of discrimination based on gender.
3. An employer will be required to follow whichever provisions of state or federal law are more strict.

C. Washington's Family Care Act (RCW 49.12.270)

1. **Highlights of the Newly Expanded Law**
 - a. The legislation was passed on March 29, 2002, with an effective date of January 1, 2003.
 - b. Under the newly-expanded Act, if an employer's employment policy or a collective bargaining agreement provides paid sick leave or other paid time off to an employee, then the employer must allow the employee his or her choice of paid leave to care for:
 - (i) A child with a health condition that requires treatment or supervision; or
 - (ii) A spouse, parent, parent-in-law or grandparent who has a serious health condition or an emergency condition.

- c. An employee taking leave under these circumstances must comply with the terms of the collective bargaining agreement (“CBA”) or employment policy applicable to the leave, except for any terms relating to the choice of paid leave.

2. **Definitions Under Proposed WAC Regulations**

On January 6, 2003, the implementing regulations for the Family Leave Act took effect. These regulations include the following definitions:

- a. “Sick leave or other paid time off” means time allowed under the terms of an appropriate CBA or employer policy, as applicable, to an employee for illness, vacation and personal holiday. It does not include any benefit which includes leave granted by short-term or long-term disability plans or policies.
- b. “Child” means a biological, adopted or foster child, a step-child, a legal ward, or a child of a person standing *in loco parentis*, who is (a) under 18 years of age or (b) an adult child 18 years of age or older and incapable of self-care because of a mental or physical disability.
- c. “Health condition that requires treatment or supervision” includes:
 - (i) Any medical condition requiring treatment or medication that the child cannot self-administer;
 - (ii) Any medical or mental health condition that would endanger the child’s safety or recovery without the presence of a parent or guardian; or
 - (iii) Any condition warranting treatment or preventive healthcare, such as physical, dental, optical or immunization services, when (1) a parent must be present to authorize, and (2) sick leave may otherwise be used for the employee’s preventive healthcare.
- d. “Serious health condition” means an illness, injury, impairment or physical or mental condition that involves —
 - (i) Any period of incapacity or treatment connected with in-patient care, and any subsequent treatment or recovery in connection with such in-patient care; or
 - (ii) Continuing treatment under the supervision of a healthcare provider, or a provider of healthcare services, and which includes any period of incapacity.

- e. “Emergency condition” means a health condition that is a sudden, generally unexpected occurrence or set of circumstances related to one’s health that demands immediate action, and is typically very short-term in nature.

3. Other Features

- a. Employers are prohibited from taking any adverse action against an employee for exercising or attempting to exercise any right provided under the expanded Act.
- b. Employers must post an updated L&I poster stipulating the provisions of the new law in a conspicuous place. Employers must also post any and all leave policies in a conspicuous place accessible to employees.
- c. Monetary penalties for infractions are up to \$200 for the first violation and, for employers who “repeatedly” violate the statute, up to \$1,000 for each violation.

4. Differences Between FMLA and Family Care Act

- a. The Family Care Act has broader scope:
 - (i) Includes all employers.
 - (ii) Includes all employees.
 - (iii) Includes parents-in-law and grandparents.
- b. The Family Care Act has broader eligibility. Employees are eligible to take paid time off to care for a sick family member as soon as they accrue earned leave.
- c. The Family Care Act has lower thresholds for health conditions of family members that will trigger its application.
 - (i) Includes illnesses of children that are not “serious health conditions” under the FMLA.
 - (ii) Has a different definition of “serious health condition” as applied to spouses, parents, parents-in-law and grandparents.
 - (iii) Includes “emergency conditions” when spouses, parents, parents-in-law and grandparents (but not children) are involved.

- d. Employee gets to select which paid leave bank to use.

5. Importance of Developing a New Family Care Leave Policy

- a. Employers can require the employee to provide advance notice of the need for such leave (i.e., prescribed time period for foreseeable leave, and “as soon as practicable” for sick leave and emergencies).
- b. Employers can add medical certification requirements when the leave is due to illness.
 - (i) Note that FMLA bars an employer from requiring more stringent certification requirements than normally required for vacation or PTO, if those paid leaves are being used.
 - (ii) Sample provision: “If the reason for the leave is the serious health condition of a spouse, parent, parent-in-law or grandparent, the normal certifications required by the Company under our FMLA, vacation, sick leave, and PTO policies will apply.”
- c. Employers can clarify that family care leave does not apply to leave granted by a short-term or long-term disability plan or policy.
- d. Allows employers the opportunity to clearly establish when leave has been “earned” and is available for use under its Family Care Leave policy.

D. Disability Discrimination Laws

1. The Americans with Disabilities Act (ADA)

The Act provides comprehensive protection for disabled individuals in hiring and employment.

- a. The ADA limits questions that can be asked and actions that can be taken.
- b. It requires that the application process be accessible to all applicants.
- c. Prohibited discrimination under the ADA includes an employer’s failure to make “reasonable accommodations” of the known physical or mental limitations of an otherwise qualified applicant or employee.