

Issue Brief

Association of Washington Business

Paid Family & Medical Leave: Waiver Program Overview & Criteria

The law is the result of months of negotiations between labor, employers and lawmakers, and passed with bipartisan support. It was designed to accommodate the many employers across Washington that already provide a paid leave benefit to employees through a waiver program.

Waiver Program Under the Paid Family Leave Law

Employers and their employees will be granted a waiver from the state run paid family and disability leave program if the following criteria are met:

1. Employees are entitled to the total number of weeks of leave allowed by the state program.
2. The employer must offer at least half of the weeks specified in the state-run program with pay, with a monetary payment amount equal to or higher than the total amount the employee would be entitled to as part of the state-run program.
3. The employer can choose to waive one or both buckets of leave.
4. If employee has worked nine months and 965 hours, then they will receive job restoration for any type of leave, whether the employer has waived out of one or both buckets.
5. If the employee has worked < 9 months + 965 hours, but has worked at least 340 hours, then they will receive job restoration for the waived bucket only.
6. Continuation of health insurance.
7. Sick leave, as required by I-1433, is entitled to the employee in addition to the paid family leave as required under this chapter.
8. The program cannot cost the employee more than the state plan.
9. Annual recertification for the first three years

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10. Assist state Employment Security Department (ESD) in implementing the waiver program, as follows:

- Appeal process for employees and employers modeled on ESD's current appeal process for UI, namely an initial claim at ESD, appeal to OAH, and appeal to trial courts.
- Employers have the right to cure, similar to pregnancy accommodations.
- ESD authority to decertify an employer. Escalating penalties before decertifying a waiver program. If waived program is decertified, revert to the state program and can't leave again for 3 years
- ESD and ombuds would be authorized to audit and investigate any program, including with a confidential employee survey
- Creation of a PFL waived-employer advisory committee.
- Requirement to provide employee with information on their rights under the program and ESD appeals, to be provided at the time the employer adopts the waived plan or at the time of hire (whichever is first) and then available to employees in handbook or in employment poster thereafter.
- Initial administrative flat fee to ESD for waiver programs that sunsets after completion of ESD study of administrative cost of waiver program for 3 years and report back.

11. New employees previously qualified for the state plan continue coverage under the state plan until 340 hours worked under private plan. All employees must work 820 hours for a waived employer or a state-program employer before coverage under a waived plan, identical to the state plan.

12. Employees who leave a private plan employer revert to public plan at end of last calendar day of employment.

13. Any changes in standards in state policy must be reflected in the waiver programs