

Chapter 50A.15 RCW
BENEFITS

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RCW 50A.15.010 Employee eligibility. Employees are eligible for family and medical leave benefits as provided in this title after working for at least eight hundred twenty hours in employment during the qualifying period. [2019 c 13 s 2; 2017 3rd sp.s. c 5 s 3. Formerly RCW 50A.04.015.]

RCW 50A.15.020 Benefit—Amount and duration. (1) Beginning January 1, 2020, family and medical leave are available and benefits are payable to a qualified employee under this section.

(a) Following a waiting period consisting of the first seven consecutive calendar days, benefits are payable when family or medical leave is required. However, no waiting period is required for leave for the birth or placement of a child, or for leave because of any qualifying exigency as defined under RCW 50A.05.010(10)(c). The waiting period begins the previous Sunday of the week when an otherwise eligible employee takes leave for the minimum claim duration under subsection (2)(c) of this section. Eligible employees may satisfy the waiting period requirement while simultaneously receiving paid time off for any part of the waiting period.

(b) Benefits may continue during the continuance of the need for family or medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this title.

(2) The weekly benefit shall be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours as defined in RCW 50A.05.010.

(a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(b) Hours on leave claimed for benefits under this title, if not a multiple of one hour, shall be reduced to the next lower multiple of one hour.

(c) The minimum claim duration payment is for eight consecutive hours of leave.

(3) (a) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks.

(b) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks. This leave may be extended an additional two times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(c) An employee is not entitled to paid family and medical leave benefits under this title that exceeds a combined total of sixteen times the typical workweek hours. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(4) (a) Any paid leave benefits under this chapter used in the postnatal period by an employee eligible for benefits under RCW 50A.05.010(23) (a) (ii) (B) must be medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this title, unless the employee chooses to use family leave during the postnatal period.

(b) Certification of a serious health condition is not required for paid leave benefits used in the postnatal period by an employee eligible for benefits under RCW 50A.05.010(23) (a) (ii) (B).

(5) The weekly benefit for family and medical leave shall be determined as follows: If the employee's average weekly wage is: (a) Equal to or less than one-half of the state average weekly wage, then the benefit amount is equal to ninety percent of the employee's average weekly wage; or (b) greater than one-half of the state average weekly wage, then the benefit amount is the sum of: (i) Ninety percent of one-half of the state average weekly wage; and (ii) fifty percent of the difference of the employee's average weekly wage and one-half of the state average weekly wage.

(6) (a) The maximum weekly benefit for family and medical leave that occurs on or after January 1, 2020, shall be one thousand dollars. By September 30, 2020, and by each subsequent September 30th, the commissioner shall adjust the maximum weekly benefit amount to ninety percent of the state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the following January 1st.

(b) The minimum weekly benefit shall not be less than one hundred dollars per week except that if the employee's average weekly wage at the time of family or medical leave is less than one hundred dollars per week, the weekly benefit shall be the employee's full wage. [2022 c 233 s 3; 2020 c 125 s 4; 2019 c 13 s 3; 2017 3rd sp.s. c 5 s 6. Formerly RCW 50A.04.020.]

RCW 50A.15.030 Employee notice to employer. (1) If the necessity for leave for the birth or placement of a child with the employee is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) If the necessity for leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

(a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and

(b) Must provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty days, the employee must provide such notice as is practicable.

(3) The employer may waive any or all of the employee notice requirements in this section and in RCW 50A.15.040(1)(f). [2019 c 13 s 5; 2017 3rd sp.s. c 5 s 12. Formerly RCW 50A.04.030.]

RCW 50A.15.040 Application for benefits. (1) Family and medical leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family and medical leave if the employee:

(a) Files an application for benefits as required by rules adopted by the commissioner;

(b) Has met the eligibility requirements of RCW 50A.15.010 or the elective coverage requirements under RCW 50A.10.010;

(c) Consents to the disclosure of information or records deemed private and confidential under state law. Initial disclosure of this information and these records by another state agency to the department is solely for purposes related to the administration of this title. Further disclosure of this information or these records is subject to chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.030;

(d) Provides his or her social security number;

(e) Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition;

(f) Provides the employer from whom family and medical leave is to be taken with written notice of the employee's intention to take family leave in the same manner as an employee is required to provide notice in RCW 50A.15.030 and, in the employee's initial application for benefits, attests that written notice has been provided, unless notice has been waived by the employer under RCW 50A.15.030(3); and

(g) Provides documentation of a military exigency, if requested by the employer.

(2) An employee who is not in employment for an employer at the time of filing an application for benefits is exempt from subsection (1)(f) and (g) of this section.

(3) Beginning July 1, 2022, and until the 12 months after the end of the state of emergency declared by the governor due to COVID-19, the department must ask the employee applicant whether their family or medical leave is related to the COVID-19 pandemic. Initial disclosure of this information is solely for purposes related to the administration of this title, including monitoring potential impacts on the solvency and stability of the family and medical leave insurance account created in RCW 50A.05.070. Further disclosure of

this information or these records is subject to chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.030. [2022 c 233 s 6; 2019 c 13 s 6; 2017 3rd sp.s. c 5 s 13. Formerly RCW 50A.04.035.]

RCW 50A.15.050 Timing of benefit payments—Employer contest of application. (1) Benefits provided under this title shall be paid periodically and promptly, except when an employer contests a period of family or medical leave. The department must send the first benefit payment to the employee within fourteen calendar days after the first properly completed weekly application is received by the department. Subsequent payments must be sent at least biweekly thereafter. If the employer contests an initial application for family or medical leave benefits, the employer must notify the employee and the department in a manner prescribed by the commissioner within eighteen days of receipt of notice from the department of the employee's filing of an application for benefits, as provided under RCW 50A.05.020. Failure to timely contest an initial application shall constitute a waiver of objection to the family or medical leave application. Any inquiry which requires the employee's response in order to continue benefits uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a clear and prominent statement of the deadline for responding and consequences of failing to respond.

(2) If an employee has received one or more benefit payments under this title, is in continued claim status, and his or her eligibility for benefits is questioned by the department or contested by the employer, the employee will be conditionally paid benefits without delay for any periods for which the employee files a claim for benefits, until and unless the employee has been provided adequate notice and an opportunity to be heard. The employee's right to retain such payments is conditioned upon the department's finding the employee to be eligible for such payments.

(a) At the employee's request, the department may hold conditional payments until the question of eligibility has been resolved.

(b) Payments will be issued for any benefits withheld under (a) of this subsection if the department determines the employee is eligible for benefits.

(c) If it is determined that the employee is ineligible for the weeks paid conditionally, the overpayment cannot be waived and must be repaid.

(3) The department must develop, in rule, a process by which an employer may contest an initial application for family or medical leave benefits. [2019 c 13 s 7; 2017 3rd sp.s. c 5 s 7. Formerly RCW 50A.04.040.]

RCW 50A.15.060 Benefit exclusions and disqualifications—Employee penalties. (1) An employee is not entitled to paid family or medical leave benefits under this title:

(a) For any absence occasioned by the willful intention of the employee to bring about injury to or the sickness of the employee or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

(b) For any family or medical leave commencing before the employee becomes qualified for benefits under this title;

(c) For an employee who is on suspension from his or her employment; or

(d) For any period of time during which an employee works for remuneration or profit.

(2) An employer may offer supplemental benefit payments to an employee on family or medical leave in addition to any paid family or medical leave benefits the employee is receiving.

(a) Supplemental benefit payments are not considered remuneration under *RCW 50A.05.010(21) and the department will not prorate or reduce an employee's weekly benefit amount due to the receipt of supplemental benefit payments.

(b) The choice to receive supplemental benefit payments lies with the employee. Nothing in this section shall be construed as requiring an employee to receive or an employer to provide supplemental benefit payments.

(3) An individual is disqualified for benefits for any week he or she has knowingly and willfully made a false statement or representation involving a material fact or knowingly and willfully failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title. An individual disqualified for benefits under this subsection (3) for the:

(a) First time is disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifteen percent of the amount of benefits overpaid or deemed overpaid;

(b) Second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(c) Third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(4) All penalties collected under this section must be deposited in the family and medical leave enforcement account created under RCW 50A.05.080. [2020 c 125 s 5; 2019 c 13 s 8; 2017 3rd sp.s. c 5 s 5. Formerly RCW 50A.04.045.]

***Reviser's note:** RCW 50A.05.010 was amended by 2022 c 233 s 1, changing subsection (21) to subsection (22).

RCW 50A.15.065 Expiration of leave entitlement. (1) The entitlement to family leave benefits for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement.

(2) The entitlement to family leave benefits for a family member's serious health condition, or leave for qualifying exigency, expires at the end of the twelve-month period beginning on the date of which the employee filed an application for the benefits.

(3) The entitlement to medical leave benefits for the employee's own serious health condition expires at the end of the twelve-month period beginning on the date on which the employee filed an

application for medical leave benefits. [2017 3rd sp.s. c 5 s 4. Formerly RCW 50A.04.050.]

RCW 50A.15.070 Federal income taxes—Withholding. (1) If the internal revenue service determines that family or medical leave benefits under this title are subject to federal income tax, the department must advise an employee filing a new application for benefits, at the time of filing such application, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The employee may elect to have federal income tax deducted and withheld from the employee's payment of benefits at the amount specified in the federal internal revenue code; and

(d) The employee is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from benefits must remain in the family and medical leave insurance account until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax. [2019 c 13 s 9; 2017 3rd sp.s. c 5 s 80. Formerly RCW 50A.04.055.]

RCW 50A.15.080 Child support obligations—Withholding. (1) If the department determines an employee is qualified for benefits and that the employee owes child support obligations, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

(2) For the purposes of this section, "child support obligations" means only those obligations that are being enforced pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under Title IV-D of the social security act (42 U.S.C. Sec. 651 et seq.).

(3) Consistent with chapter 50A.25 RCW, the department may verify child support obligations with the department of social and health services. [2020 c 125 s 6; 2019 c 13 s 10; 2017 3rd sp.s. c 5 s 30. Formerly RCW 50A.04.060.]

RCW 50A.15.090 Repayment and recovery of benefit overpayments.

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable eligibility period for which the purported

overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, conditional payment, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience. An overpayment waived under this subsection shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days' notice, using a method by which the mailing can be tracked or the delivery can be confirmed, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For premium purposes, the back pay

award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of paid family or medical leave benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the paid family and medical leave fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any premiums due for paid family and medical leave insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer that shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50A.45.040.

(5) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50A.15.060 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(6) Any penalties and interest collected pursuant to this section must be deposited into the family and medical leave enforcement account.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2019 c 13 s 11; 2017 3rd sp.s. c 5 s 32. Formerly RCW 50A.04.065.]

RCW 50A.15.100 Unemployment compensation, industrial insurance, and disability insurance laws—Effect on title. (1) Leave from employment under this title is in addition to leave from employment during which benefits are paid or are payable under Title 51 RCW or other applicable federal or state industrial insurance laws.

(2) An employee is disqualified from receiving family or medical leave benefits under this title for any week in which the employee is receiving, has received, or will receive compensation, as determined by the governing state or federal agency under:

- (a) Title 50 RCW;
- (b) RCW 51.32.060;
- (c) RCW 51.32.090; or

(d) Any other applicable federal unemployment compensation, industrial insurance, or disability insurance laws. [2020 c 125 s 7; 2019 c 13 s 38; 2017 3rd sp.s. c 5 s 69. Formerly RCW 50A.04.240.]

RCW 50A.15.110 Leave available under other laws—Coordination.

(1) Leave under this title and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Unless otherwise expressly permitted by the employer, leave taken under this title must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017). [2019 c 13 s 40; 2017 3rd sp.s. c 5 s 79. Formerly RCW 50A.04.250.]

RCW 50A.15.120 Assignment, pledge, or encumbrance of right to benefits due or payable void—Exemptions. Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this title is void. Such rights to benefits are exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as provided in RCW 50A.15.080. Benefits received by any employee, so long as they are not commingled with other funds of the recipient, are exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished to such employee or the employee's spouse or dependents during the time when such individual was receiving family or medical leave. Any waiver of any exemption provided for in this section is void. [2019 c 13 s 69.]