



Washington
Hospital Services

INDUSTRY PARTNER



Paid Family Medical Leave: What You Need to Know

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Today's Agenda

- PFML Overview
- Washington PFML:
 - COVID-19 Considerations
 - Claim Guidelines
 - State Program Details
- Oregon PFML Details
- Understanding PFML and Disability Benefits
- Resources and Questions
- Information provided is current as of June 17, 2020





PFML Overview



Paid Family and Medical Leave (PFML) Defined

Paid Family and Medical Leave allows an employee to take time off work to care for their own, or for a family member's, health. It is typically a job-protected benefit.

Medical or “Own Medical” Leave provides paid leave for an individual's OWN serious health condition

Paid Family Leave provides paid leave to care for others

What's Covered?

FAMILY LEAVE

Bonding



Leave to bond with the covered individual's child during

- The first 12 months after the child's birth; or
- The first 12 months after the placement of the child for adoption or foster care with the covered individual

Caring



Leave to care for a family member with a serious health condition

Active Duty



Leave arising due to

- A family member on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or
- caring for a family member who has returned from active duty

MEDICAL LEAVE

Own Medical



Leave to care for an individual's own serious medical condition

PFML Plan Overview

There are similarities across PFML laws, but state governance gives variation to plan designs

- Almost all **private** employers – regardless of size
- Virtually all employees – seasonal, part time and temporary
 - **Massachusetts** 1099 employees are covered when they make up 50% or more of the workforce
- The cost is shared by the employee and the employer
 - **California and Connecticut** are 100% employee paid
- Benefit waiting period – 0 or 7 days depending on state or leave reason
- Benefit is a percentage of earnings to a maximum
 - In some states, percent level varies based on income. Lower earners get higher percentage of income replacement
- Variable leave durations based on state and leave type or reason
 - Total leave duration is limited to the benefit year, or 52 week rolling period, and not to the leave event. Exception is bonding



Taxation of PFML Benefits

- Federal tax law governs taxation of PFML benefits at both the Federal and State levels
- Lack of clarity on the PFL portion of the law when it is Employer-paid
 - The law often sits under unemployment, so it would be considered taxable
- When “Own Medical” is paid, the Employee-Paid portion of the premium should **NOT** be taxable
- IRS guidance on taxation is unclear. Employers and individuals should take these questions to their tax advisors.



What to expect in 2020

Strong Chance of More Federal Action:

- Will PFL be a priority in 2020, given the uncertain political climate? Business and industry experts want action. But there's no guarantee elected officials will move on the issue
- The Business Roundtable, a group of CEOs from America's top companies, is urging Congress and the president to act on federal PFML legislation. They're citing the challenges caused by the expanding patchwork of competing, inconsistent state plans. They're also talking about the need to offer leave benefits to help employees
- On the legislative front, U.S. Senator Kirsten Gillibrand's reinvigorated FAMILY Act will likely move forward in 2020. Her 2018 bill proposes 12 weeks of partial paid leave for family and personal medical needs. It calls for funding through a new 0.4% payroll tax, split between employers and employees
- The outlook isn't as rosy for past legislation proposed by Republicans. That includes the Economic Security for New Parents Act and Workflex in the 21st Century Act, which have lost momentum

What to Expect with Paid Leave Laws in 2020

The Big Picture

- Twenty-nine states introduced legislation in 2019 and three states enacted Paid Family and Medical Leave laws
- We anticipate at least 10 states will carry over 2019 legislation or propose new laws for consideration in 2020
- And, if the 2020 election creates high turnover in the makeup of the legislative chambers, we could see even more activity in 2021



Washington PFML Program



Washington Paid Family and Medical Leave

Waiting Period	Min/Max Benefit	Max Duration
7 Days*	\$100/\$1,000	12/18 weeks**

- Provides up to 90 percent of weekly wage to a maximum of \$1,000 per week
- Must work a minimum 820 hours leading up to leave date
(means that employee may receive benefits before FMLA eligible)
- Employers have the option to create a voluntary plan that meets or exceeds the state plan. They can opt for either the medical leave, family leave or both
- Job protection follows FMLA regarding the group size applicability. However, under a Voluntary Plan a lower threshold exists: 9 months and 965 hours, versus 12 months and 1250 hours
- Premium is 0.4 percent of gross pay and is divided between medical leave and family leave (2/3 – 1/3); Premium is employer and employee paid
- Supplemental Benefits

*There is no Elimination Period for Bonding or Placement of a child.

**In any benefit year



COVID-19 Considerations and WA PFML

Should I use paid sick leave or Paid Family and Medical Leave if I'm sick with COVID-19?

Workers that are ill with COVID-19 and have access to employer-provided paid sick leave should consider using this first – this is the first line of economic support in the face of this virus. Paid Family and Medical Leave is different than paid sick leave but may also be used if you are ill with the virus. Here are key differences that you may want to consider:

- Paid sick leave is usually paid directly by the employer
- Paid sick leave is available for minor illnesses and preventative health care, as well as more serious health conditions. Paid Family and Medical Leave is for serious health conditions only
- There is no waiting week with paid sick leave like there is with Paid Family and Medical Leave ([see the Employer Benefit Guide for more information about the waiting week and definition of a serious health condition](#))
- Paid sick leave is typically full wage replacement where Paid Family and Medical Leave is partial wage replacement ([see webpage for calculator tool](#))
- Paid Family and Medical Leave requires medical certification to be approved



COVID-19 Considerations and WA PFML

Can I use PFML if I am quarantined due to COVID-19?

- Quarantine, as well as school closures and childcare closures are not qualifying events under the program at this time, but if someone is sick with get the medical certification of the virus, they can apply for PFML

I lost my job due to illness from/quarantined for COVID-19. What should I do?

- PFML and/or Unemployment Insurance may be able to help. Both are administered by the Employment Security Department, but they are different programs with separate eligibility requirements
- You do not have to be employed to receive PFML benefits, but you cannot collect Unemployment Insurance and PFML benefits at the same time
- ESD enacted emergency rules to relieve the burden of temporary layoffs, isolation and quarantine for workers and businesses. Learn more about how Unemployment Insurance can help you if you are laid off, isolated or quarantined as a result of the virus on ESD's COVID-19 web page



COVID-19 Scenarios & Benefits Available

The information shared on this flyer does not necessarily reflect the official policy or position of any other agency or company. It is the reader's responsibility to verify the facts of coverage.

COVID-19 SCENARIOS		Paid Sick Leave (employer paid)	Unemployment Insurance		Paid Family & Medical Leave	Industrial Insurance (L&I)
		Current Law	Current Law	Emergency Rule	Current Law	Current Law
1	Worker is mildly ill with COVID-19.	✓	✗	✓	?	?
2	Worker is severely ill with COVID-19.	✓	✗	✗	✓	?
3	Worker was exposed and quarantined. Business remains open.	✓	✗	✓	✗	?
4	Worker is caring for sick family member.	✓	✗	?	✓	✗
5	Schools are closed by a public official because of COVID-19 and worker has no childcare.	✓	✗	?	✗	✗
6	Worker is immune-compromised and advised to self-quarantine.	?	✗	✓	?	✗
7	Worker is following the advice of public health and government officials to self-quarantine and chooses not to go to work.	✗	✗	✓	✗	✗
8	Employer must shut down due to a quarantine by a public official.	✓	✓	✓	✗	?
9	Employer shuts down due to a business slowdown or lack of demand.	✗	✓	✓	✗	?
10	Employer reduces available hours due to business slowdown or lack of demand.	✗	✓	✓	✗	?
11	Employer stays open in defiance of public health urging to close.	✗	?	?	✗	?
12	Health care workers and first responder are under quarantine.	✓	✗	✗	✗	✓



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ESD.WA.GOV



WA Employment Security Department Updates

FOR IMMEDIATE RELEASE – May 28, 2020

Email Media Inquiries: media@esd.wa.gov

Total claims for Unemployment Benefits Decrease from the previous week

OLYMPIA – During the week of May 17-23, there were 48,445 initial regular unemployment claims, down from 65% from the prior week and 1,497,591 total claims for all unemployment benefit categories filed by Washingtonians, according to the Employment Security Department (ESD). ESD believes the decrease was in large part due to significant fraud prevention measures that were put in place over the past two weeks.

ESD paid out over \$494.5 million for 424,995 individual claims.



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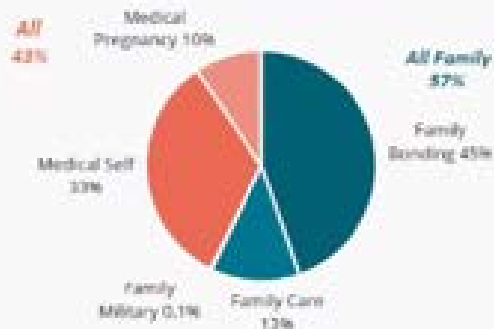
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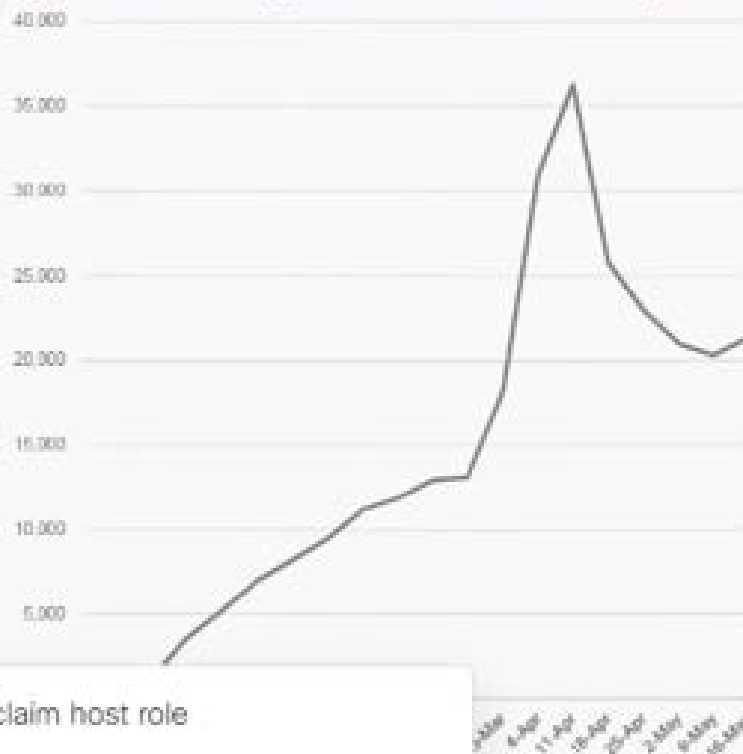


Application & Weekly Claim data – through 5/18/20

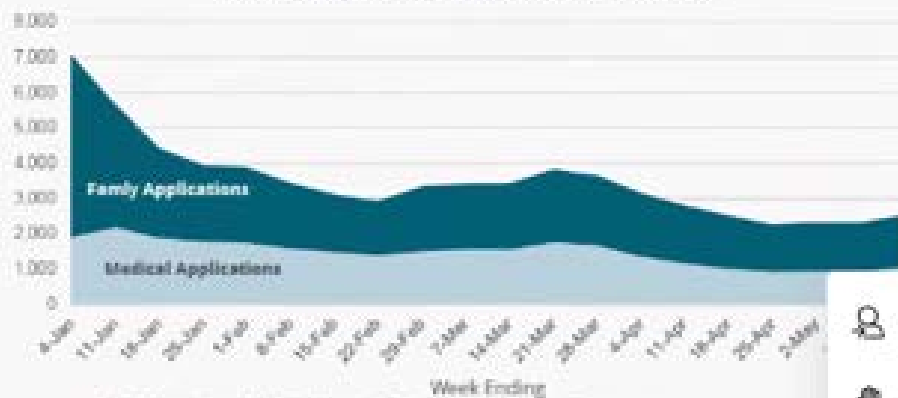
Benefit Applications



New Weekly Claims Submitted - Weekly



New Applications Submitted - Weekly



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Reclaim host role

Raise Hand



Oregon Paid Family and Medical Leave



Oregon Paid Family and Medical Leave

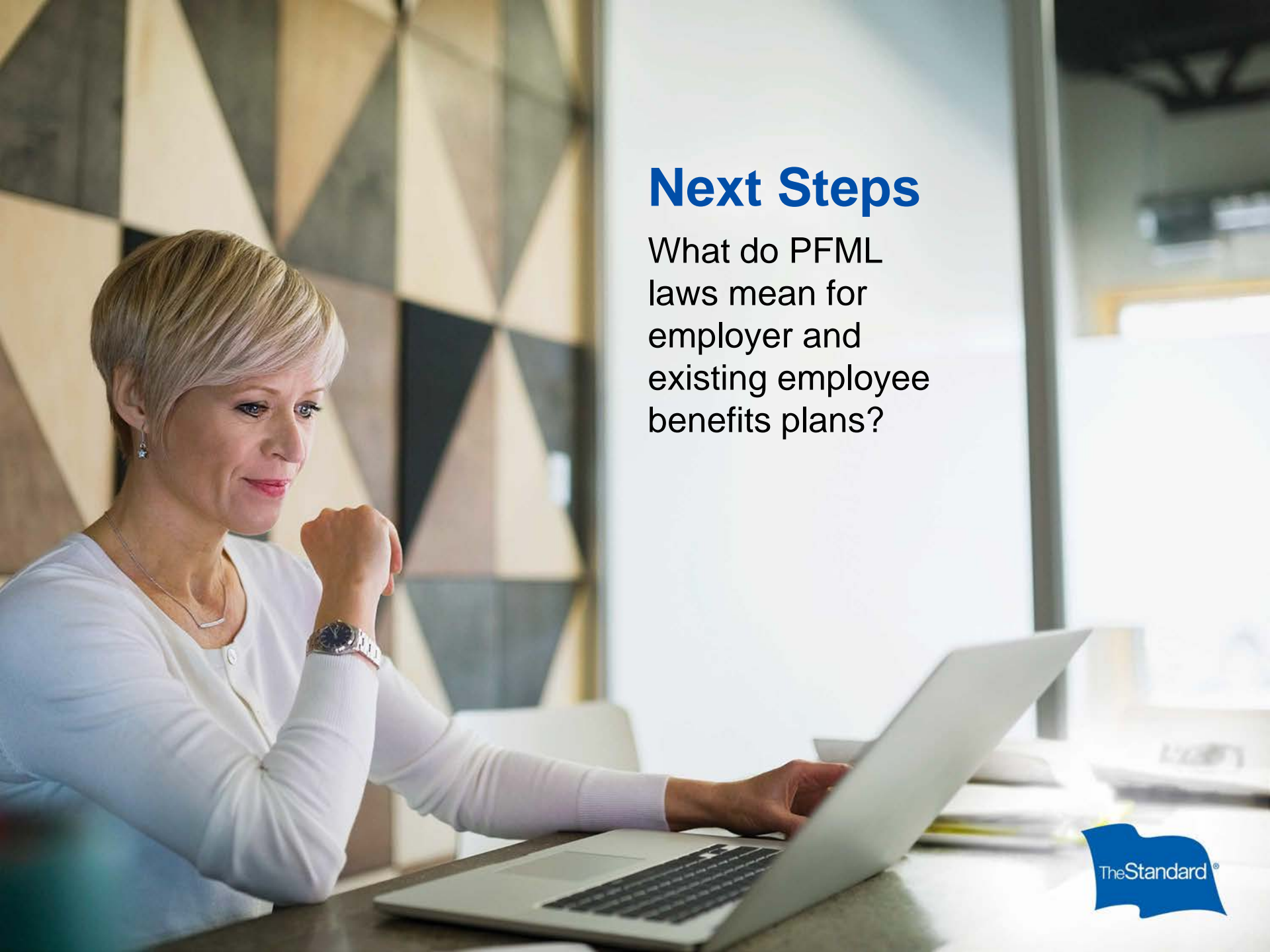
Waiting Period	Min/Max Benefit	Max Duration
??	\$52/\$1,253	12*/16 weeks

- Payroll deductions begin on Jan. 1, 2022.
- Provides up to 100 percent of weekly wage to a maximum of \$1,253 per week
- This statewide insurance program will provide job-protected leave and benefits for family caregiving, child bonding, one's own medical condition and safe leave.
- Employer and employee contributions fund the PFML program.
- Employees can receive 100% of their wages up to 65% of the state's average weekly wage.
- The law runs concurrently with the federal Family and Medical Leave Act.
- Rules must be adopted by 9/1/2021
- Unclear if there will be a fully insured option, but we have representation on one of the regulatory subgroups to promote a private plan option. There is no state trade association to assist with insurer representation



Oregon PFML continued

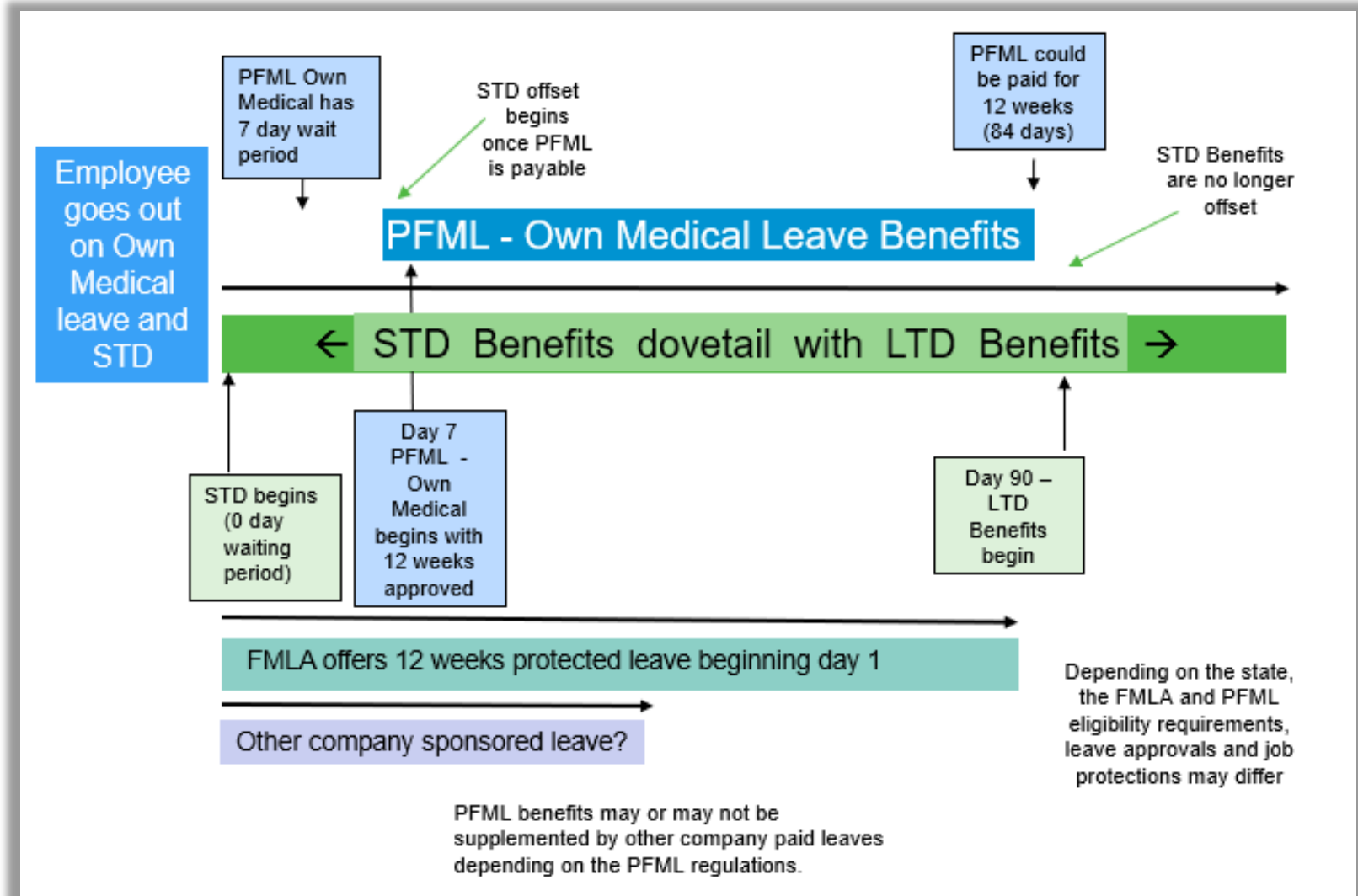
- What is a Safe Leave? It includes leave a covered individual can access to seek law enforcement assistance or remedies, medical treatment, counseling victim services or relocate for issues or injuries arising from domestic violence, sexual assault, harassment or stalking of the covered individual, the covered individual's minor child or dependent. To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee's minor child or dependent.
- Uses one of the broadest definitions of 'family member,' which includes non-related individuals who have a close relationship with the covered employee.
- Benefits are in addition to paid sick time (including Oregon state required paid sick time), vacation leave or other paid leave earned by an employee.
- Intermittent Leave may be taken in increments that are equivalent to one work day or one work week.



Next Steps

What do PFML laws mean for employer and existing employee benefits plans?

There are Multiple Timelines and Variables to Track



Employers Top Concerns

- For more than half of all employers, regardless of industry and size, compliance with federal, state and municipal regulations are a top concern
- Many employers agree that properly administering and managing lost time, including FMLA, incidental absences, STD, worker's compensation and the ADAAA, is a top priority for their organizations
- Less than half of all employers have a strategy for administering leaves and both occupational and non-occupational disabilities (absence management)

What Should Employers Be Doing?

- Staying current with PFML rulemaking nationwide
- Be aware of fast approaching deadlines prior to PFML effective dates
- Begin reviewing employee benefits programs and understand how PFML laws will impact them:
 - Company Leave Policies
 - PTO
 - Sick Leave
 - STD
 - LTD



Possible Changes to Benefit Plan Designs

With several state plans increasing Employer mandated payments; employers may start looking at the following:

- Change in benefit plan designs
 - Eliminating or reducing benefits to pay for new state mandated plans
 - PTO
 - Moving to a higher deductible medical plan
 - Moving to more EE paid benefits (Voluntary Benefits)
- Trying to adjust all plans to match a current state plan
 - As new states pass legislation, they may be more or less generous than the state that was matched which could make their unified plan design out of compliance



When PFML (Own Medical) and STD run concurrently, the PFML benefit will offset STD benefits.

WA PFML

- 12, 16 or 18 weeks per claim year (rolling 52 weeks)
- Up to 90% income replacement
- up to \$1,000 per week

Common STD Plans

- 90 day benefit period per claim
- 60-70% income replacement
- \$1,000 - \$5,000 per week

STD can help supplement PFML Benefit Example

The Situation

Sarah needs to have knee replacement surgery and cannot work for 10 weeks. She files a PFML and STD claim (both have 7 day waiting periods):

\$130,000 annual earnings

STD plan offers 60% to \$1,500 max per week

PFML benefit offers \$1,000 max per week

$\$1,500 - \$1,000 = \$500$ is weekly STD benefit

Total PFML + STD Weekly Benefits = \$1,500

The Solution

Sarah receives 9 weeks of combined benefits of \$13,500

Without STD, Sarah would only receive \$1,000 per week (\$9,000 total) while she recovers from surgery.

Sarah will receive **\$4,500 more over the 9-week period if she has a higher STD benefit to supplement PFML.**



Resources & Questions



Resources

Your local Standard sales and service office

Relatively Speaking!

www.standard.com/paid-family-leave

State Disability and Paid Family Leave Reference Guide

www.standard.com/eforms/19866.pdf

For detailed, state-specific questions:

WA – www.paidleave.wa.gov

Industry Employer Resources

Disability Management Employer Coalition (DMEC)

www.dmec.org

Society of Human Resource Management (SHRM)

www.shrm.org

External Legal Counsel

When in doubt about what a state is requiring, external legal counsel is a great resource. Many law firms are tracking activity and details related to the laws that are being passed.



Appendix

- Additional slides relating to information from the WA state PFML website that were not discussed follows this slide

WA Employment Security Department Updates

Unemployment Claim Type	Week of May 17-23	Week of May 10-16	Week of May 3-9
Regular Unemployment Insurance (UI) – Initial Claims	48,445	138,733	109,425
Pandemic Unemployment Assistance (PUA) – Initial Claims	21,250	61,325	55,911
Pandemic Emergency Unemployment Compensation (PEUC) – Initial Claims	19,111	59,630	47,626
Continued/Ongoing Weekly Claims	1,408,785	1,410,892	1,088,602
Total Claims	1,497,591	1,670,580	1,301,564



WA Employment Security Department Updates

- The Employment Security Department (ESD) expands staff to tackle unprecedented claim volume, resolves to review all applications
- ESD has paid out over \$2 billion in benefits to more than half a million Washingtonians since the crisis began. This money is feeding families and paying bills for many, but ESD acknowledges that 57,000 applicants are still waiting for their claims to be reviewed
- ESD's objective is to provide relief to all eligible Washingtonians. The Department has launched [Operation 100%](#), their plan to accelerate processing and quickly distribute benefits to those eligible
- The plan involves rapid hiring of staff, new technology, and triage of phone traffic. ESD's top priority is to clear the backlog. ESD will also email another 187,000 eligible individuals that have tasks to complete before claims can be processed
- The objectives of *Operation 100%* are to substantially reduce the backlog by late May, and to have 100% of the backlog resolved or paid by mid-June. Washington can observe the progress of *Operation 100%* on [ESD's website](#)



WA Employment Security Department Advisory Committee Updates

Target Two Weeks Headlines (as of 5/18/2020)

Demand continues to fluctuate

- Week over week application volumes remain above initial projections; however, new applications have decreased since 3/22/2020.
- Four weeks in a row we have processed more than we have received!

Working Hard to Address Demand

- >45,000 applications processed.
- > 264,000 weekly claims processed.
- Program is actively monitoring and addressing the older applications.
- We are finding many claims are older because claimants had no response.

Premium Collection

- 1st Qtr. 2020 reporting ended 4/30/2020 - no decline in Wage Reporting or Premium Collections. (Anticipate Covid-19 impact in 2nd Qtr., August 2020).

Program Solvency

- Invoiced benefits approx. \$144 million.
- Invoiced premiums approx. \$757 million.
- Statute allows rate adjustment 1/1/2021:
 - >\$694.8 million may increase rate to .5%.
 - >\$810.5 million year 1 may require action this year.

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10



Target Two Weeks: Results= Applications Processed

Then



Applications
processed

Now

(+54 Specialists Processing)



Applications
processed

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