

Family, Maternity and Military Caregiver Leave

Leave for Temporary Disability Due to Pregnancy or Childbirth

Employees may use accumulated sick and/or vacation leave for the period of actual disability attributable to pregnancy or childbirth. If an employee has exhausted sick and vacation leave, then the ESD shall, upon request, grant the employee a leave of absence without pay or fringe benefits for the period of actual disability due to pregnancy or childbirth.

The ESD may require the employee to furnish a written document from a health care provider stating that the employee is actually disabled, that the disability is attributable to pregnancy or childbirth, and the anticipated duration of the disability.

Family and Medical Leave

Eligible employees are entitled to twelve (12) work weeks of family and medical leave in a twelve-month period.

Family and medical leave may be taken for:

1. birth of a child and to care for the newborn child;
2. adoption or foster placement of a child in the employee's home, and to care for the newly placed child;
3. care of a child, a spouse, registered domestic partner, or parent with a serious health condition; or
4. when the employee is unable to work because of a serious health condition.

Leave taken to care for a newborn or newly-adopted child must be completed within twelve (12) months after the birth or adoption.

Family leave under Washington State law may be taken in addition to any leave for sickness or temporary disability due to pregnancy or childbirth.

The employee is required to use total accumulated vacation and/or sick leave as defined in 5401 prior to leave without pay being granted.

If both spouses or registered domestic partners are employed by the ESD, they together will be entitled to a total of twelve (12) weeks of leave during any twelve (12) month period for the birth, adoption, or foster care of a child and/or for care of a sick parent. Leave may be granted to only one spouse at a time.

A full 12 weeks of medical leave are available to each eligible employee for his/her own serious health condition or for that of a child or the other spouse or registered domestic partner. However, the employee is limited to a total of twelve (12) weeks of family and/or medical leave during any twelve (12) month period.

Federal Family Medical Leave Act Continuation of Health Benefits

Employees eligible for family and medical leave under the Federal Family Medical Leave Act, are entitled to continue their health benefits on the same terms and conditions as active employees with the same benefits and employer contributions during the 12-week period.

Arrangements must be made with the Payroll Department prior to commencement of the leave for the employee to pay his/her share of the health insurance contribution while on family leave.

If the employee fails to return from leave, the employee may be required to reimburse ESD for all premiums paid during the unpaid portion of the leave.

Military Caregiver Leave

An employee who is the spouse, son or daughter, parent or next of kin of a service member who is recovering from a serious illness or injury sustained while on active duty is entitled to twenty six (26) weeks of unpaid leave in a 12 month period to care for the service member.

Notice

Eligible employees are required to provide 30 days advance notice before foreseeable leave is scheduled to begin and such notice is practicable. If this isn't possible, employees must give notice as soon as is practicable. If leave is for planned medical treatment (of the employee or employee's family member), an employee must make a reasonable effort to schedule the treatment to minimize disruption of the ESD's business.

The ESD may defer the start of family and medical leave until 30 days after receiving the request/notice if the leave was foreseeable and the employee did not provide the required thirty (30) days notice.

Medical Certification

Eligible employees may be required to provide medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member; second or third medical opinions and period recertification; and periodic reports during family and medical leave regarding the employee's status and intent to return to work. Certification must be made by the employee's or the ill family member's health care provider. Certification must state:

1. when the serious health condition began;
2. how long it is expected to last;
3. medical facts surrounding the condition;
4. if leave is for a family member's serious health condition, that the employee is needed to care for the ill family member (and for how long);
5. if leave is for the employee's serious health condition, that the employee is unable to perform the functions of his/her job;

6. for intermittent or reduced hours leave for the employee's illness, that the leave is medically necessary and how long it is expected to last; and
7. for intermittent or reduced hours leave for a family member's illness, that the employee's leave is necessary to care for the ill family member or will help the family member's recovery. The schedule and duration of leave must be specified.

If the ESD has reason to doubt the validity of the medical certification, it reserves the right to require a second medical opinion at ESD expense.

Intermittent or Reduced Leave

Eligible employees can take leave for a family member's or their own serious health condition all at once, or if medically necessary, on an intermittent or reduced hours basis. Example: If the employee took four hours of leave, only four hours of the 12 weeks of leave entitlement would have been used. Offering intermittent or reduced hours leave for births and adoption is optional and must be agreed upon between both employee and the ESD.

Employees returning from family leave are entitled to reinstatement to their former position or to a job with benefits, salary, and other employment conditions equivalent to those of the former position.

Nothing in this section shall be construed to entitle any employee to any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

Any leave desired or necessitated following the family leave will be considered under Vacation Leaves and Leaves of Absence as appropriate.

Definitions

For the purpose of family, medical, maternity, and military caregiver leave the following terms are defined:

"Eligible Employee" is anyone who was employed by the ESD for at least twelve (12) months and who has worked a minimum of 1250 hours during the year preceding the start of the leave.

"Parent" is the biological parent of an employee or an individual who acted in place of a parent(s) to an employee when the employee was a child.

"Child" is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person acting in place of a parent(s); who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.

"Spouse" means an individual who is entered into a legally recognized marriage in the State of Washington. Spouse does not include a divorced or legally separated spouse.

"Registered domestic partner" means a domestic partner of an employee where the employee and domestic partner are entered into a state registered domestic partnership in Washington or other state providing similar domestic partnership registration.

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves either:

1. any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical-care facility; and any period of incapacity or subsequent treatment in connection with such inpatient care; or,
2. continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - a. a health condition (including treatment or recovery) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
 - i. treatment two or more times by or under the supervision of a health care provider; or,
 - ii. one treatment by a health care provider with a continuing regimen of treatment; or,
 - b. pregnancy or prenatal care; or,
 - c. a chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (i.e., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or,
 - d. a permanent or long-term condition for which treatment may not be effective (i.e., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or,
 - e. any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (i.e., chemotherapy or radiation treatments).

Legal References:

Chapter 49.78 RCW Family Leave.

WAC 162-30-020 Pregnancy, childbirth, and pregnancy related conditions.

29 USC Sec 2601 Family and Medical Leave Act of 1993.

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