

KITSAP COUNTY PROTECTED LEAVES POLICY

Purpose

The purpose of this policy is to inform and educate Kitsap County employees of the available State and Federal legislation that involves protected leave.

Family Medical Leave Act (FMLA)

([U.S. Department of Labor](#))

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Kitsap County is a covered employer under FMLA. Eligibility for FML is defined as an employee who has worked for the employer for at least 12 months and has at least 1,250 hours of service for the employer (during the 12-month period immediately preceding the leave). Workers Compensation time loss and/or WA Paid Family Medical Leave may count against your FMLA entitlement.

Eligible employees may take up to 12 workweeks of leave in a 12-month rolling calendar year period for one or more of the following reasons:

- The birth of a child or placement of a child with the employee for adoption or foster care;
- To care for a spouse, child, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of the job; or
- For any qualifying exigency arising out of the fact that a spouse, child, or parent is a military member on covered active duty or call to covered active duty status.

REQUESTING LEAVE

When an employee needs to apply for FML leave, they may access the application through the Kitsap County Human Resources [Protected Leave website](#). A packet may be requested from Human Resources to be mailed or sent electronically.

The FML packet consists of:

1. FML/Medical Leave Request Form
2. Medical Certification Form
3. FMLA Notice of Rights and Responsibilities

The employee must provide the completed Medical Certification within fifteen (15) calendar days of receipt of the FML Packet unless it is not practicable under the particular circumstances. A reasonable extension of this deadline may be granted provided a request is made prior to the Medical Certification submission deadline and the employee notifies Human Resources of the status of the required documentation. The Medical Certification must be complete to determine the eligibility for leave, and the leave's duration and frequency specified. Insufficient medical certification may delay or deny FML leave until and unless the Medical Certification is remedied within fifteen (15) calendar days from the date the employee is notified of the insufficient certification.

FML INTERMITTENT OR REDUCED WORK SCHEDULE LEAVE

An employee may take leave intermittently in separate blocks of time, or on a reduced work/leave schedule to schedule to care for an immediate family member with a serious health condition or because of the employee's own serious health condition when "medically necessary".

Employees must provide Medical Certification that specifies anticipated duration frequency, and/or necessary schedule. Forms must be provided within the time frames specified above.

Reduced schedule leave and intermittent leave for personal medical leave is limited to times which are scheduled for treatment, recovery from treatment or illness, and for periods of disability due to a chronic health condition, including psychological care. An employee must have prior consent of his or her supervisor when intermittent or

reduced leave is taken after the birth or placement of a child for adoption or foster care. Approval of intermittent or reduced leave for the purposes of bonding may be denied, rescinded, or rescheduled based on staffing/business needs. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as to not unduly disrupt Kitsap County's operations.

In accordance with the Fair Labor Standards Act and FMLA regulations, exempt (salaried) employees should be aware that time taken under FMLA will be tracked on an hourly basis and employees may be temporarily assigned as an hourly employee. As a result, compensation during FMLA leave may be prorated or adjusted based on the number of hours of leave taken. This tracking and/or designation does not affect the exempt status outside of FMLA-designated absences.

RIGHTS AND RESPONSIBILITIES

1. Prior to entering into FML leave without pay status, the employee must exhaust all paid leave, including compensatory time, floating holiday, accrued vacation and general leave. Accrued sick leave does not need to be exhausted prior to going into leave without pay. **Exceptions:** Employees on leave for work related injuries or utilizing the Washington Paid Family Medical Leave (PFML) are not required to exhaust all paid leaves before going in to leave without pay status.
2. An employee must provide the County at least 30 days advance notice before the FML leave is to begin if the leave is foreseeable. If the need for leave is not foreseeable, notice must be given as soon as practicable. Failure to give proper notice may result in FML leave being denied or delayed.
3. If leave is taken for an FML qualifying reason about which Kitsap County was unaware, and the employee desires that the leave be counted as FML leave, then the employee must notify the County within two business days after returning to work. If an employee does not provide notice and certification of an FML qualifying reason for the leave within fifteen (15) calendar days, the leave may be denied, or the employee may not subsequently assert FML protections for the absence.
4. If leave is taken for an FML qualifying reason that the County is aware, then the leave may be automatically designated, in order to ensure the employee receives all the rights and entitlements under the law.
5. While on FML leave, the employee is entitled to the same health, dental and vision benefits. For the duration of the FML Leave, the County will continue to pay the employer contributions for any health, dental, basic life, vision and disability insurance. The employee is responsible for paying the employee share of the contributions. If the employee is using accrued balances and is in full paid status, the employee portion of contributions will be deducted from the paycheck like usual. If the employee is in leave without pay status, the employee must remit payment for the employee share of contributions timely. Contact Human Resources to arrange a self-payment schedule if you might be in a leave without pay status.
6. Upon returning to work from FML leave, an employee:
 - a. Is entitled to the same position held by the employee when the FML leave commenced or an equivalent position.
 - b. Has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FML leave period.
 - c. Who fails to return to work on the established ending date of the FML leave without a qualifying reason may be precluded from returning to full-time employment with the County.

RECERTIFICATION

1. For conditions lasting beyond a single leave year, medical certification will be required in each subsequent leave year.

2. The County will require recertification if the circumstances of the leave change significantly (the duration of leave, the frequency with which leave is needed, etc.).
3. Medical recertification, like initial certifications, must be complete and sufficient.
4. If the County identifies possible patterns of leave abuse, such as frequent absences before and after scheduled days off, the County may require recertification that asks the pattern of absences and requests the health care provider to answer whether the patterns of absence are consistent with the serious health condition and the need for FML leave.
5. Employees must provide required medical recertification within fifteen (15) calendar days after notification, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good-faith effort. Employees must request extended deadlines in writing before the expiration of the original deadline. Failure to do so may result in denial of FML leave.
6. Medical Certifications and re-certifications shall be obtained at the employee's expense.

RETURNING FROM LEAVE

When an employee is attempting to return from any extended personal medical absence, they will be required to submit a Fitness for Duty form from the treating health care provider. This document states that the employee is able to perform the essential functions of the job with or without accommodation and therefore can return to work. The Fitness for Duty Form must be submitted to the County before the employee may return to their job. Access to the Fitness for Duty form and links to the physical requirements of County jobs are located on the [Protected Leave website](#).

CDL drivers may be required to undergo a DOL medical examination to be released to duty if their illness or injury has impaired the driver's ability to perform their normal duties and/or essential functions, even if their current certification has not expired,

If an employee's absence from work was due to care for a family member, then the employee needs to notify their department of the planned return to work date.

Washington Paid Family Medical Leave (PFML) ([RCW 50.A](#))

Washington Paid Family Medical Leave (PFML) is a statewide insurance program administered by the Employment Security Department that provides wage replacement for an eligible employee. PFML is funded by mandatory employer contributions and employee payroll deductions. To be eligible for compensation benefits under PFML, an employee must have worked at least 820 hours (approximately 16 hours per week) for a Washington employer during the previous year. To be eligible for job protected leave and health care coverage continuation under PFML, an employee must have been employed with their current employer for at least 180 calendar days before taking leave.

Under PFML, eligible employees may take up to 12 weeks of leave for the following qualifications:

- Care for and bond with a child younger than 18 following birth or placement
- Care for yourself, a family member, or someone who has an expectation to rely on you for care, whether you live together or not who is experiencing a serious health condition
- Certain military-connected events

PFML approved leave must be taken in a minimum increment of 4 consecutive hours in a claim week to be paid compensated benefits.

If you face multiple events in a year, you may be eligible to receive up to 16 weeks, and up to 18 weeks if you experience a serious health condition during pregnancy that results in incapacity.

PFML benefit is calculated and paid by the Employment Security Department (state of Washington). Kitsap County does not allow an employee to supplement PFML with their paid County leave accruals in order to achieve 100% salary replacement. You can, however, use your paid County leave accruals intermittently with PFML.

Paid Family Medical Leave requires that you give your employer(s) written notice at least 30 days in advance of when you plan to take leave. However, if the reason you need leave was not foreseeable, you may notify your employer(s) as soon as possible by stating your intent to apply for PFML.

If you are eligible for another protected leave in addition to PFML, Kitsap County will designate the time off as such and run the leaves concurrently. Job protection is extended to and counted toward any period of unpaid or paid leave protected by the FMLA where the employee was also eligible for PFML benefits but did not apply for and receive those benefits.

Human Resources may require the following documentation for those on approved PFML:

- Proof of application submitted to the ESD
- Proof of PFML approval from the ESD
- Dates of continuous leave and/or intermittent leave as prescribed by a physician
- Proof of weekly claims showing the hours and days submitted for benefits
- Any documentation received from the ESD regarding your claim

Paid Family and Medical Leave (PFML) is a benefit administered by the Washington State Employment Security Department (ESD). Because this is a benefit through the State of Washington, PFML applications and questions should be directed to ESD.

Email: paidleave@esd.wa.gov **Phone:** 833-717-2273 **Web:** www.paidleave.wa.gov

Washington Family Care Act (WFCA)

([RCW 49.12.265](#), [WAC 296-130](#))

Employees in Washington State are entitled to use their choice of sick leave or other paid time off to care for qualifying family members with a serious health condition.

Defined family members that qualify for use of the Family Care Act include:

- Child under 18 (biological, adopted, foster, stepchild, etc.) or adult child incapable of self-care
- Parents
- Spouse
- Registered domestic partner
- Parents-in law
- Grandparents

Grandparents-in-law, grandchildren, and siblings are not included. Leave under the Family Care Act is not available for an employee's personal medical condition, it can only be used for a qualifying family member. An employer may require documentation if an employee's absence is greater than 3 days. Leave must be approved by the department if using vacation or floating holiday time.

Paid Sick Leave

([RCW 49.46](#), [WAC 296-128](#))

If you are an employee in Washington State, your employer is required to provide you with paid sick leave. An employee shall earn at least one hour of paid sick leave for every 40 hours worked, which begins the date of your first day of work. Paid sick leave may be used for the following reasons:

- For a mental or physical illness, injury, or health condition or if you need a medical diagnosis/preventative medical care.
- If a family member needs care for a mental or physical illness, injury, or health condition, or needs a medical diagnosis or preventative medical care.
- If your workplace or your child's school/place of care has been closed for any health or emergency-related reason by order of a public official.

- If you are absent from work for reasons that qualify for leave under the state's Domestic Violence Leave Act (DVLA).

Defined family members that qualify for use of paid sick leave include:

- Child - This may include a biological, adopted, or foster child, stepchild, a child's spouse or child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
- Parent – This may include your biological, adoptive, de facto, or foster parent, your stepparent, or someone who was your legal guardian or their spouse or registered domestic partner – or a person who stood in loco parentis when the employee was a minor child.
- Spouse
- Registered domestic partner
- Grandparent
- Grandchild
- Sibling
- Any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that the individual depends on the employee for care.

Employee's should follow department call-out procedures. An employer cannot take negative action for accrued sick leave usage or issue disciplinary action for a qualified absence under the paid sick leave eligibility terms.

Washington Pregnancy Disability Leave ([RCW 43.10.005](#))

Washington's [workplace pregnancy accommodation](#) law provides protections for employees who have health conditions related to pregnancy or childbirth. This law applies to all employers with 15 or more employees. An employer must make efforts to accommodate reasonable requests from an employee or work restrictions recommended by their physician.

A pregnant employee is eligible for pregnancy disability leave immediately upon employment with no waiting period. However, medical certification is required to confirm the need for leave. If the employee is eligible for FML leave, the Pregnancy Disability leave will run concurrently with FML leave. Pregnancy Disability leave is unpaid and health benefits are not automatically continued (unless the employee is also eligible for FML leave); however, accrued leave may be used and the employee may continue insurance coverage at the employee's expense.

Please visit the Washington State Department of Labor & Industries website for [Pregnancy Accommodations](#).

Military Family Leave under FMLA ([U.S. Dept. of Labor Fact Sheet](#))

The military family leave provisions of the Family and Medical Leave Act (FMLA) entitle eligible employees of covered employers to take FMLA leave for any "qualifying exigency" arising from the foreign deployment of the employee's spouse, child, or parent with the Armed Forces, or to care for a servicemember with a serious injury or illness if the employee is the servicemember's spouse, child, parent or next of kin.

- Please visit the Department of Labor's [Employee Guide to Military Family Leave](#) for detailed information.