



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY  
**DEPARTMENT WIDE**  
Non-represented Only

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10/7/22

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# POLICY

TITLE

**FAMILY AND MEDICAL LEAVE**

## REVIEW/REVISION HISTORY:

Effective: 7/30/99  
Revised: 2/3/05  
Revised: 4/6/08  
Revised: 7/1/13  
Revised: 6/16/14  
Revised: 10/7/22

## SUMMARY OF REVISION/REVIEW:

Major changes to include adding Paid Family Medical Leave and alignment with updated statute. Read carefully!

## APPROVED:

Signature on file

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**CHERYL STRANGE**, Secretary  
Department of Corrections

9/6/22

Date Signed



# POLICY

## REFERENCES:

DOC 100.100 is hereby incorporated into this policy; [RCW 49.78](#); [RCW 50A.05](#); [WAC 192-700-020](#); [WAC 296-130](#); [WAC 357-31](#); DOC 830.100 Leave; DOC 830.200 Workers' Compensation/Transitional Return to Work Program; Family and Medical Leave Act of 1993; [Paid Family and Medical Leave](#)

## POLICY:

- I. The Department recognizes the need to balance workplace demands with family needs, promote the stability and economic security of families, and promote national interests in preserving family integrity.
- II. The Department will comply with applicable RCWs, WACs, federal laws, and collective bargaining agreements regarding Family and Medical Leave (FML) and Paid Family and Medical Leave (PFML). The Family and Medical Leave Act is a federal law with provisions that may run concurrent with leave provisions under WAC 357-31 and WAC 296-130.
- III. All employees involved in the FML and PFML process will maintain confidentiality to the extent possible.

## DIRECTIVE:

- I. Family and Medical Leave
  - A. FML is a federal entitlement providing job protection and insurance maintenance for employees who:
    1. Worked for the state of Washington for a total of 12 months, and
    2. Actually performed work, not including leave taken, or on military leave for at least 1,250 hours during the 12 months before the start of FML.
  - B. FML requires Appointing Authority/designee approval, who will designate up to a total of 12 workweeks (i.e., 480 hours) of paid/unpaid FML during the 12 month period following the first day of FML, provided the absence is for one or more of the following reasons:
    1. Birth or adoption of a child, or foster care placement of a child with the employee.
    2. Care for a child, spouse, state registered domestic partner, or parent (i.e., the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child) with a serious health condition. The Appointing Authority/designee may require

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employees to provide reasonable documentation to confirm the family relationship.

- a. Leave taken to care for a state registered domestic partner per RCW 49.78 will not count against an employee's federal Family and Medical Leave Act entitlement, but may count against the employee's state PFML entitlement if approved by the Washington State Employment Security Department (ESD).
3. An employee's serious health condition that prevents the employee from performing one or more of the essential functions of the job.
4. A qualifying exigency arising because the employee's spouse, child, or parent is a service member on active duty, or has been notified of an impending call to covered active duty, in support of a contingency operation.
  - a. If the spouse/child/parent is a member of the regular armed forces (i.e., United States Army, Navy, Air Force, Coast Guard, or Marine Corps, excluding reserves and National Guard), the active duty deployment must be to a foreign country.
  - b. Exigency leave may be taken for the following reasons when the need is directly related to the spouse/child/parent's covered active duty:
    - 1) Short notice deployment,
    - 2) Military events and related activities,
    - 3) Childcare and school activities,
    - 4) Financial and legal arrangements,
    - 5) Counseling,
    - 6) Rest and Recuperation (R&R) during deployment, limited to 15 days from the date R&R commenced,
    - 7) Post-deployment activities,
    - 8) Parental care of the service member's parent who is incapable of self-care, and/or



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- 9) Additional activities approved by the Appointing Authority/designee, including timing and duration.
5. Care for a covered service member or veteran with a serious injury or illness if the employee is the service member/veteran's spouse, child, parent, or next of kin.
- C. The Appointing Authority/designee may consider any employee absence for 3 or more consecutive days due to a work-related injury or illness as FML, if the injury or illness meets the criteria of a serious health condition.
- D. The Appointing Authority/designee will designate up to a total of 26 workweeks of paid/unpaid FML during a single 12 month period to provide care for a covered service member or veteran who is suffering from a serious illness or injury arising from injuries incurred in the line of duty or aggravated by line of duty service.
1. Covered service members include the employee's spouse, child, parent, or next of kin.
  2. Covered veterans include the employee's spouse, child, parent, or next of kin who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that occurred any time during the 5 years before treatment began.
  3. During the single 12 month period, an employee is limited to a combined total of 26 workweeks for Military Family Leave and leave for other FML qualifying reasons.
  4. The employee's next FML year will begin the first time FML is taken after completion of the previous 12 month period.
- E. Parental Leave
1. Employees are eligible to take up to a total of 6 months of paid/unpaid Parental Leave during the first 12 months following the birth or adoption of a child or the foster care placement of a minor/ dependent child with the employee.
    - a. The Appointing Authority/designee may deny leave requests for non-medically necessary Parental Leave beyond the employee's FML entitlement on the basis of operational necessity (e.g., critical recruitment and staffing problems, unmet specific qualifications for the position).



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- 1) Denials will be in writing to the employee within 10 days and will inform the employee of the reason for the denial.
2. Parental leave will be in addition to any leave taken for sickness or temporary disability due to pregnancy or childbirth per RCW 49.78.
3. Parental leave must conclude within 12 months of the birth, adoption, or foster care placement.
4. Parental leave exceeding 6 months may be approved at Appointing Authority/designee discretion.
5. Employees will be allowed to use their accrued leave, including shared leave, during Parental Leave.
  - a. Use of accrued sick leave during Parental Leave will not exceed 18 weeks or the period of time covered by the FML entitlement, whichever is less.
6. Use of periodic leave (i.e., leave which can be taken in separate periods of time) or a reduced work schedule (i.e., a work schedule which reduces the normal work schedule by a number of hours per week or weekday) for Parental Leave is subject to Appointing Authority/designee approval.

### F. Intermittent Family and Medical Leave

1. Intermittent leave or leave on a reduced schedule will be granted:
  - a. For an eligible employee's own serious health condition, if medically necessary,
  - b. To care for a spouse, state registered domestic partner, child, or parent with a serious health condition or covered service member or veteran with a serious injury or illness, if medically necessary, or
  - c. For a qualifying exigency arising because the employee's spouse, child, or parent is a service member on active duty, or has been notified of an impending call to covered active duty, in support of a contingency operation.
2. Intermittent leave to care for a newborn/foster/adopted child will be considered on a case-by-case basis. Before such intermittent leave is taken, the Appointing Authority/designee must approve the schedule to be worked.



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3. Employees requiring a reduced schedule will consult with their supervisor to arrange a schedule that meets the employee's needs while not unduly disrupting office operations.
4. The Appointing Authority/designee may temporarily reassign an employee on intermittent FML to an alternate position or assignment, for which the employee is qualified, if the position would better accommodate the employee's planned medical treatments and the Department's needs. The employee will continue to receive equivalent pay and benefits while in the alternate position.

### G. Management/Supervisor Responsibilities

1. When an employee has been absent from work for more than 3 days for an apparent FML-qualifying condition or situation, the employee's supervisor will notify the Human Resources Office, which will advise the Appointing Authority whether the condition meets the criteria for FML.
2. The Appointing Authority or designee will document the absence as FML as soon as possible after the circumstances that qualify for FML are known.
  - a. The Appointing Authority/designee may provide only one notice to advise employees of approval of periodic leave or a reduced work schedule unless the circumstances change regarding the FML.
  - b. The written notice will:
    - 1) Specify the beginning date of the FML, which may include leave taken for a qualifying condition before the written designation.
    - 2) Include specific expectations and obligations of the employee and notice of whether a medical release will be required before returning to work.
3. The supervisor/designee will:
  - a. Track an employee's use of FML, and
  - b. Notify Timekeeping and the Human Resources Office when the employee returns to work following FML.

### H. Employee Responsibilities



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1. An employee will provide the Appointing Authority/designee 30 days' advance notice of the need to take FML when the need is foreseeable. When the need is unforeseen, the employee will provide notice as soon as practicable. The written notice must include:
  - a. Planned start date of the FML absence,
  - b. Reason for the absence,
  - c. Expected duration and frequency of the absence, and
  - d. Intended return to work date.
2. When requested, the employee will provide certification of the medical need for FML within 15 days and cooperate in obtaining a completed certification form if the original form is incomplete. Failure to meet the 15 day deadline or provide a reasonable explanation for the delay may result in the loss of FML protection for the leave and/or the leave being deemed unauthorized.
3. The employee will inform the Appointing Authority/designee before scheduling medically required periodic treatment to work out a treatment schedule that best suits the needs of the Department and the employee. Upon request, the employee will provide the reasons why the periodic leave/reduced work schedule is necessary and the schedule for treatment.
4. The employee's spouse, state registered domestic partner, adult family member, or legal guardian may provide notice of the need for FML if the employee is medically unable.
5. If the employee is able to return to work earlier than the stated return to work date, the employee will notify the supervisor/designee as soon as possible of the new return to work date.
6. If requested, the employee will provide a medical release before or upon returning to work.

## I. Certification

1. The employee will provide written medical certification by an authorized health care provider, supporting the need for leave due to a serious health condition affecting the employee or qualifying family member.
  - a. Certification may be submitted using the appropriate U.S. Department of Labor Wage and Hour Division form. If an alternative format is used, the employee will be responsible for ensuring it contains equivalent information:



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- 1) [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act](#)
  - 2) [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act](#)
  - 3) [WH-385 Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act](#)
  - 4) [WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave under the Family and Medical Leave Act](#)
- b. The Department may require the employee to obtain a second opinion at the Department's expense and/or request verbal or written clarification from the health care provider who is providing the first or second opinion.
  - c. During medically necessary FML, employees will inform the supervisor/designee of their status and intent to return to work. Status updates must be made at least every 30 days, regardless of the anticipated length of absence, unless the supervisor approves a longer update period.
  - d. The Appointing Authority/designee may request medical certification no more than every 30 days for conditions under the continuing supervision of a health care provider, unless circumstances change significantly or abuse is suspected.
2. The employee will provide written certification supporting the need for exigency leave related to a military service member using [WH-384 Certification for Military Family Leave for Qualifying Exigency under the Family and Medical Leave Act](#).

## J. Job Status and Benefits

1. During FML, the Appointing Authority/designee may begin the interactive reasonable accommodation process.
2. The Appointing Authority/designee may offer modified duty during FML for Labor and Industries injuries or illnesses per DOC 830.200 Workers'

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Compensation/Transitional Return to Work Program. Employees using FML may decline the modified duty assignment. However, industrial insurance time loss benefits will not continue once a modified duty assignment has been refused.

3. Upon the conclusion of FML, an employee will be restored to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions that the employee had when the FML began.
  - a. If the employee is unable to perform the essential functions of the position, the interactive reasonable accommodation process may begin while an employee is covered by FML.
  - b. If a disability separation is necessary, the disability separation notice period may run concurrently with the employee's FML entitlement.
4. The Department will continue the employee's existing employer-paid group health insurance benefits during FML at the level and conditions of coverage that would have been provided if the employee had been at work continuously. An employee on leave without pay during FML must make arrangements with the Payroll Office to pay any employee-paid portion of health care premiums.
5. The employee is not entitled to additional benefits or seniority while on unpaid FML. Employees may maintain benefits beyond their employer-paid health insurance at their own expense. Employees wishing to do so must contact their Payroll Office immediately to determine the amount to be paid. Failure to do so within 31 days will require re-enrollment but not re-qualification for these benefits.
6. Employees may elect to use accrued vacation leave, sick leave, shared leave, compensatory time, and personal holiday, or take leave without pay per WAC 357-31 and DOC 830.100 Leave to cover some or all of the unpaid FML.
  - a. Employees on FML who received shared leave donations must only use the donated leave while on approved FML for the qualifying condition.
7. The Department may recover premiums paid to maintain health coverage from an employee who fails to return to work if the failure to return is:
  - a. Not due to illness/circumstances beyond the employee's control, or



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- b. For reasons other than the continuing serious health condition.
- 8. Failure to comply with FML procedures may result in withdrawal of FML designation, denial of continuation of FML, and/or disciplinary action. The Appointing Authority/designee will notify the employee in writing of any denial or withdrawal of FML.
- 9. Should a layoff occur during FML and the employee's position is eliminated, layoff rules and policies will apply in the same manner as if the employee were still on the job. When a separation from state service occurs as a result of layoff, FML and all employment benefits will cease.

### II. Paid Family Medical Leave

- A. PFML is a statewide insurance program administered by the ESD that provides partial wage replacement with job protections for employees that have worked a minimum of 820 hours in the state of Washington during the qualifying period.
- B. An employee may take up to 12 weeks of PFML within a year. In some instances, an employee may qualify for up to 16 or 18 weeks a year for applicable multiple qualifying events and pregnancy complications.
  - 1. Qualifying events include:
    - a. Family Leave:
      - 1) Bonding with a newborn, adopted, or foster child,
      - 2) Supporting a family member with a serious medical condition,
      - 3) Certain events that are connected to a family member's active duty military service, and
      - 4) Bereavement for a family member whom the employee would have qualified for birth of a child or bonding for 7 days following the death.
    - b. Medical Leave:
      - 1) Recovering from a serious health condition which may include surgery, illness, or injury, and
      - 2) First 6 weeks postnatal.

- 1) Recovering from a serious health condition which may include surgery, illness, or injury, and

- 2) First 6 weeks postnatal.



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2. Family members that qualify for PFML include:
  - a. Spouses and domestic partners
  - b. Employee/spouse's parents or legal guardians
  - c. Siblings
  - d. Grandchildren
  - e. Employee/spouse's grandparents
  - f. Son-in-law and daughter-in-law
  - g. Children (i.e., biological, adopted, foster, stepchild, legal guardian, de facto, or loco parentis)
  - h. Individuals who have an expectation to rely on the employee for care whether they live together or not
- C. The employee may apply by using the appropriate ESD form at <https://paidleave.wa.gov/app/uploads/2020/11/Paid-Leave-Certification-Forms-11-09-2020.pdf>.
  1. The ESD will determine if an employee qualifies for PFML and the total amount of leave an employee may take.
- D. Employees must provide the Appointing Authority/designee with written notice of a PFML absence within 30 days of a foreseeable absence.
  1. If the PFML absence is unforeseeable, then the employee must provide written notice to the Appointing Authority/designee as soon as practicable. The written notice must include the:
    - a. Planned start date of the PFML absence,
    - b. Reason for the absence,
    - c. Expected duration and frequency of the PFML absence, and
    - d. Intended return to work date.
  2. PFML can be approved for a continuous period of time or intermittently. When using PFML, the employee must use a minimum of 8 consecutive hours per week.
- E. The supervisor/designee will:
  - a. Track an employee's use of PFML.
  - b. Notify Timekeeping and the Human Resources Office when the employee returns to work following PFML.
- F. Job Status and Benefits



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1. An employee is entitled to job restoration upon returning from a PFML absence if the employee has been employed by the state of Washington for at least 12 months and has worked for the state of Washington for at least 1,250 hours in the 12 months immediately preceding the start of the PFML absence.
  - a. An employee must be returned to the same or equivalent position held prior to the absence.
  - b. Restoration may only be denied there is proof the employee would not have otherwise been employed at the time of restoration or as defined in RCW 50A.35.010(6)(b) and WAC 192-700-010.
2. If an employee has at least one day of overlap with leave taken under FMLA per WAC 192-700-020, health benefits will continue to be paid by the Department during the paid or unpaid leave granted under FMLA.
  - a. An employee on leave without pay during PFML must make arrangements with the Payroll Office to pay any employee-paid portion of health care premiums.
3. The employee is not entitled to additional benefits or seniority while on unpaid PFML.
  - a. Employees may maintain benefits beyond their employer-paid health insurance at their own expense by contacting their Payroll Office immediately to determine the amount to be paid.
    - 1) Failure to contact the Payroll Office within 31 days will require re-enrollment, but not re-qualification.
4. An employee may use accrued vacation leave, sick leave, compensatory time, holiday pay, and personal holiday as a supplemental benefit while the employee is receiving partial wage replacement or take leave without pay per WAC 357-31 and DOC 830.100 Leave.
5. During PFML, the Appointing Authority/designee may begin the interactive reasonable accommodation process.

### III. Records

- A. Documents relating to FML and PFML medical certifications for an employee or their family members will be maintained as confidential medical records in the Employee Occupational Health Record.



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B. Records relating to FML and PFML will be maintained for a minimum of 3 years, including, but not limited to:

1. Attendance records maintained in Payroll Offices, and
2. Personnel records and Employee Occupational Health Records maintained in Human Resources Offices.

### **IV. Violations**

A. Employees may report perceived violations of the:

1. Family and Medical Leave Act to a Department Human Resources Office or the federal Department of Labor.
2. Paid Family and Medical Leave Act to ESD or the Office of the Paid Family and Medical Leave Ombuds.

### **DEFINITIONS:**

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Health Care Provider, Serious Health Condition, Spouse, Workweek. Other words/terms appearing in this policy may also be defined in the glossary.

### **ATTACHMENTS:**

None

### **DOC FORMS:**

None