

Thurston County Fire Protection District 8

DISTRICT PROCEDURE MANUAL



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Washington Paid Family Medical Leave (PFML) – Information and Employer Checklist

The District Secretary shall be responsible for managing the District's PFML program for its employees. The following is: (1) a summary of the key considerations in relation to an employer's (District) role when an employee opts to use PFML; and (2) a brief administrative checklist for when an application is filed:

1. Employee Rights Notification

In addition to posting general information on PFML in the workplace, the law requires that employers provide employees notice of their rights under the PFML program when an employee misses seven (7) consecutive days due to family or medical leave. (RCW 50A.20.010) The District should also provide any employee eligible for PFML with a copy of the *Benefit Guide*. The District Secretary may provide further information or reference to the *Benefit Guide* for the employee.

2. Employee Leave Notice

When an employee plans to be out for family or medical leave, they are expected to provide the employer notice. The law states the employee's notice should be delivered at least thirty (30) calendar days prior to the planned leave if possible (recognizing that some qualifying events cannot be planned for). This notice should be made in writing. To make this process efficient and to ensure the District receives the necessary information, an *Employee Leave Notice* template is attached to this document. Note that the form includes information regarding employer provided leave. This will be addressed under Section 6 below. The employee should complete this document and submit it to the District Secretary as soon as reasonably possible.

PFML can be taken intermittently. For example, if an employee needs every Monday off to take a family member in for treatment, the employee will only receive the benefit for each Monday. In other words, the twelve (12) available weeks do not need to be taken consecutively.

3. Employer's FMLA Notice

PFML (state) and Family Medical Leave Act (FMLA--federal) differ in that the state of Washington administers PFML, while each covered employer administers FMLA. As a public agency, the District is considered a "covered employer," which means the District is obligated to provide employees all required information and notices. However, employees of an agency with less than fifty (50) employees (such as the District) are not eligible for leave under FMLA; the District has less than 50 employees. *This means that the District is required to provide the required FMLA notice, but the employee will not be eligible for the leave.*

The standard FMLA notice should be provided to the employee immediately after the employees notifies the District Secretary of their intent to file a claim under PFML. The employee would fill out the top of page 1. The District Secretary would fill out "Section I – Notice of Eligibility." Under this section, the District Secretary would check "Not eligible" because "You do not work at and/or report to a site with 50 or more employees within 75-miles as of the date of your request." The remaining sections do not apply because the employee is not eligible.

4. ESD Process Compliance

When the employee files their PFML claim with Washington Department of Employment Security (ESD), the ESD will reach out to the District Secretary to: (1) notify the District of the claim; and (2) request certain payroll information. The reason ESD requires this information is because PFML is a partial wage replacement (not unlike worker's compensation.) In order to determine the amount of the benefit, ESD needs to know what the employee's typical hours and wages are. Compliance with ESD's requirements are mandatory.

5. Supplemental Benefit

The District has opted to offer a “supplemental benefit.” Because PFML is a partial wage replacement (up to 90% of the employee’s normal wages), the program allows employers to offer a supplement to fill in the gap (so that the employee is “made whole” during their leave). The District offers this supplement by allowing employees on PFML to use available sick or vacation leave to make up the difference. It is important to note that this is a benefit offered to employees. *Employees may choose not to accept it*, in which case, they will not receive any compensation from the District. *Employees will remain responsible for any employee contribution to employer sponsored insurance premiums and benefit payments.*

6. Election of Leave

The employee should use the *Employee Leave Notice* to designate: (1) if they would like to use the employer provided supplemental benefit; and (2) from which leave banks they would like the supplement to be drawn from. For example: if an employee receives 90% of their pay from the PFML benefit and opts to utilize the supplemental benefit, they could indicate on the form that they would like the remaining 10% paid through use of their available vacation leave.

For purposes of determining the amount of the supplemental benefit, it is important for the employee to work with the District Secretary to provide necessary information. District policy prohibits any employee from receiving more than their normal wages. Therefore, it is essential that the employee provide the District Secretary with the amount of benefit received for each week. The supplemental benefit will be an amount equal to the difference between the amount of benefit received from ESD and the employee’s normal District wages. Leave payments for supplement benefits are subject to all the standard payroll deductions.

7. Other Benefits

An employer’s obligation to continuing making contribution to other benefits (life insurance, retirement matching, etc.) during PFML depends on whether the employee is accepting the supplemental benefit. If the employee does not accept the supplemental benefit, *the employer would not make any payment to the employee for the period and, therefore, make no contributions.*

If, instead, the employee accepts the supplemental benefit, such payment would be subject to the same contributions that an employee would receive from the ordinary use of sick or vacation leave. Similarly, *an employee will not accrue additional paid sick or vacation leave based on PFML payments.*

8. Waiting Period

PFML has a seven (7) day waiting period before the eligible employee can collect ESD benefits. The waiting period begins on the Sunday of the week in which the claim is filed. For example, if the employee files a claim on Tuesday, their waiting period would be the previous Sunday through the following Saturday. During the waiting period, the employee will not receive wage replacement through PFML. However, the employee can choose to draw from their available leave banks during this period. Employees who want to use available leave during their waiting period should designate the same on the *Employee Leave Notice*.

9. Department of Revenue Services (DRS) Reporting

While sick leave and vacation leave are reportable as compensation (see WAC 415-104-373), ESD PFML benefit payments are not considered basic salary reportable to DRS.

10. Contesting Application

As a general matter, it is the purview of ESD to determine an employee’s eligibility and amount of benefit. However, employers have the right to contest an application for PFML. (see RCW 50A.15.050). Written notice of the contest must be submitted by the employer to ESD and the employee within eighteen (18) calendar days of ESD notifying the employer of the application. There must be a legitimate grounds for contesting, such as: (a) ineligibility of the employee; or (b) suspected fraud. It is unlawful for an employer to “...interfere with, restrain, or deny the exercise of, or the attempt to exercise...” an employee’s rights under the PFML program. (see RCW 50A.40.010). An unreasonable contest of an application may appear as interfering with the employee’s right to PFML.

There is also a process for appealing ESD’s determinations in relation PFML. However, that process is beyond the scope of this document.

DISTRICT'S PFML CLAIM CHECKLIST:

Step 1 – An employee notifies the District Secretary in writing of their intent to apply for PFML. The District Secretary will provide the employee with: (a) the *Employee Leave Notice*; and (b) the *PFML Benefit Guide*.

NOTE: If an employee does not notify the District Secretary of an intent to apply for PFML, but misses seven (7) consecutive days to care for a family member or take medical leave, the District Secretary will provide the employee with the *PFML Employee Rights Form* and the *PFML Benefit Guide*. If the employee confirms that they will apply for PFML, the District Secretary will provide the *Employee Leave Notice*.

Step 2 – The District Secretary will provide the employee the FMLA Notice within five (5) business days of the employee's notice of an intent to apply for PFML.

Step 3 – The Fire Chief will determine if there are legitimate grounds to contest the application.

Step 4 – The District Secretary will collect the *Employee Leave Notice*. The employee and the District Secretary will work together to ensure any waiting period leave or supplement benefit is accounted for and drawn from the proper leave banks. If an employee opts out of the supplemental benefit, the District Secretary will arrange for payment of the employee's contribution (if any) to the District insurance plan.

Step 5 – After the employee applies for PFML, ESD will request payroll records. The District Secretary will promptly comply with the request.

Step 6 – When the employee's benefit has been determined, the employee and the District Secretary will work together to determine the amount of supplement benefit (if any) will be provided by the District based on the amount of the PFML benefit payment.

Step 7 – The employee, the Fire Chief (or designee) and the District Secretary will communicate regarding the employee's return to work.