



Family and Medical Leave: The Continuing Evolution of Washington State Law

By Geoffrey M. Boodell

Employers with 50 or more employees are well aware of, and often understandably mystified by, the complex requirements imposed by the federal Family Medical Leave Act (FMLA) and its implementing regulations promulgated by the U.S. Department of Labor (DOL). As many of you are aware⁴, serious debate has been brewing in Washington D.C. about possible amendments to the FMLA. Fueled in part by concerns that the future amendments to the FLMA might restrict employees' leave entitlements, the Washington State Legislature recently passed significant amendments to our state Family and Medical Leave Act (WFMLA). **The law goes into effect June 7, 2006.** This new law, which is not yet codified and exists as Substitute House Bill 6185, will not provide new rights, but will insure the continuation of protections workers and their families in Washington State now have under the federal FMLA, even if the federal government rolls back some provisions as many are expecting.

FMLA Refresher: The FMLA creates two interrelated substantive rights for employers. First, it grants a qualified employer the right to take up to 12 weeks of continuous or intermittent leave for various family and medical reasons, with continued insurance benefits. Second, it provides an employee the right to be restored to his or her original position or a position equivalent in benefits and pay and other conditions of employment upon returning from leave. The FMLA also provides that "it shall be unlawful to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this chapter."

Highlights of Washington's Revised Act: The revisions to our WFMLA parallel the federal FMLA, making the state law current with federal standards and preserving those rights for Washington employers. Employers will be required to display a poster of these rights, which is being created by Washington State's Department of Labor and Industries (L&I). As of the date of this note, L&I had not yet completed the poster, but it is expected to be forthcoming soon. The amendments also create a private cause of action, which will allow employees to bring civil actions against employers for alleged violations of the WFMLA.

The amendments to the WFMLA also preserve two additional rights of Washington employees, which exceed the rights provided under federal law. State law is more protective than the FMLA in the following areas:

1. A Washington employee returning from FMLA leave has the right to return to an equivalent position in a workplace within 20 miles of the employee's previous workplace.
2. In the case of pregnancy or childbirth related to **disability**, a Washington Employee must be granted leave for the full period of disability without reducing her leave entitlement under the FMLA. The disability leave is in addition to FMLA leave to care for a newborn or for any other FMLA-qualifying reason. Because the disability leave requirement is set forth in the regulations under Washington's Law Against Discrimination, *it applies to employers with eight or more employees*, even though employers with fewer than 50 employees are not covered by either the FMLA or the WFMLA.

Practical Guidelines: For now, the state and federal laws are the same, so the same advice regarding administering leave applies:

- Keep accurate records of the dates that an employee takes FMLA leave.
- Within two business days of discovering that the leave is subject to the FMLA, inform an employee the leave taken will be counted towards the employee's FMLA entitlement.
- Require medical certification for leave relating to serious health conditions.
- Employers can make the determination that leave taken is FMLA leave if the FMLA's criteria are met, even if the employee does not want the leave to be counted towards his or her FMLA leave entitlement.
- Employers may be required to provide additional leave as a reasonable accommodation under the federal or state disability discrimination laws, in addition to the leave that is required under the FMLA. The amount of additional leave depends on the circumstances.
- For salaried employees, pay deductions of less than a full day for intermittent leave do not destroy the exemption under the federal Fair Standards Labor Act (FLSA).

In recent years, there have been other changes in Washington law, including the Washington Family Care Act, which affected the content of employer leave policies. Employers should ensure that their employment policies are up to date and comply with all applicable federal and state leave laws.

*This Employment Law Note is written to inform our clients and friends of developments in labor and employment relations law. It is not intended nor should it be used as a substitute for specific legal advice or opinions since legal counsel may be given only in response to inquiries regarding particular factual situations. For more information on this subject, please call Sebris Busto James at (425) 454-4233.

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