


**Oregon & Washington
Family & Medical Leave Act
& COVID-19**



Presented by Gabrielle Hansen
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Today's Topics

- Washington Paid Family Leave (PFML)
- Oregon Family Leave Act (OFLA)
- COVID-19 Specific Considerations for OFLA and PFML
- Federal Family Medical Leave Act (FMLA)
- Families First Coronavirus Relief Act (FFCRA)

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Washington Paid Family Medical Leave (PFML)

- What is it?
 - Provides paid leave through a state-run insurance program
 - The Washington Employment Security Department determines eligibility
 - Includes job protection and restoration rights for employees if:
 - they work for an employer with 50 or more employees;
 - they have worked for this employer for at least 12 months; and
 - they have worked 1,250 hours in the 12 months before taking leave (about 24 hours per week, on average)

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PFML

• Eligible Employees:

- Employees who have worked 820 hours in previous year
 - This is cumulative and does not have to be with the same employer or over a consecutive period

• Covered Employers:

- Almost every Washington employer
- Exceptions include:
 - Some employees subject to collective bargaining agreements (although this is going to be less and less common as time passes)

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PFML

• Employer Notice Requirements:

- Mandatory Poster
- Employers must provide the required notice to employees who they believe need leave in accordance with the following:
 - Five business days after an employee's seventh consecutive day of absence due to family or medical leave, or
 - Five business days after an employer becomes aware that the employee's absence is due to family or medical leave

• Employee Notice:

- Foreseeable leave
 - At least 30 days
- Unforeseeable leave
 - As soon as is possible

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• Reasons for Leave:

- Parental leave
- Serious illness or injury to self
- Need to care for a seriously ill or injured qualifying family member
- Time for pre- and post-deployment activities

• Serious Illness or Injury:

- Generally means illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or continuing treatment by a health care provider. Ordinarily, unless complications arise, cosmetic treatments and minor conditions such as the cold, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraines), and routine dental problems are examples of conditions that are not serious health conditions.

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- Length of Leave:
 - Up to 12 weeks of medical leave for a serious health condition
 - Up to 16 weeks of combined medical and family leave
 - Up to 18 weeks of pregnancy-related leave
- Leave Benefit:
 - Partial wage replacement
 - Generally 90% of weekly wage up to a max of \$1,000 per week

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Considerations for Using PFML & COVID-19

- PFML cannot be used for quarantine due to COVID-19
- PFML cannot be used due to the closure of a school or childcare center to care for a qualifying child
- A diagnosis of COVID-19 or the need to care for a qualifying family member due to their diagnosis of COVID-19 may entitle an employee to use PFML as long as the employee or family member has a serious health condition
- Don't forget to determine where the employee is localized if teleworking

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Legislative Changes PFML

- March 2020: House Bill 2614
 - "Family member" adds son-in-law and daughter-in-law
 - Clarifies the definition of "Paid Time Off" and "Supplemental Benefits":
 - "Supplemental benefit payments" means payments made by an employer to an employee as salary continuation or as paid time off. Such payments must be in addition to any paid family or medical leave benefits the employee is receiving.
 - "Paid time off" includes vacation leave, personal leave, medical leave, sick leave, compensatory leave, or any other paid leave offered by an employer under the employer's established policy
 - Eliminates the waiting period for military exigency leave
 - Clarifies that the waiting period for leave starts on the previous Sunday in the week in which the employee starts leave

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Oregon Family Medical Leave (OFLA)

- Covered Employers: 25 or more employees in Oregon
- Eligible Employees:
 - OFLA Parental Leave: Employees who are employed at least 180 days
 - All other OFLA Leave: Employees who are employed at least 180 days and who work an average of at least 25 hours per week

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OFLA Notice Requirements & Considerations

- Within 5 business days of knowledge that leave may qualify as OFLA
 - Notice of Rights and Responsibilities
 - Certification Form (if applicable)
- Within 5 business days of knowledge that leave does or does not qualify as OFLA leave
 - Designation Notice

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OFLA

- Reasons for Leave:
 - Serious health condition
 - Sick child
 - Parental
 - Pregnancy disability
 - Military family
 - Bereavement

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OFLA: Serious Health Condition

- Requires that an employee or employee's family member have a serious health condition
- OFLA leave may be available due to employee's own underlying serious health condition or to care for a family member required to quarantine due to a serious health condition

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OFLA: Serious Health Condition

- OFLA definition of Serious Health Condition:
 - An illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. Ordinarily, unless complications arise, cosmetic treatments and minor conditions such as the cold, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraines), and routine dental problems are examples of conditions that are not serious health conditions.
- Diagnosis of COVID-19 may or may not qualify as a serious health condition

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OFLA: Sick Child Leave

- OFLA permits eligible employees to take leave when their child has an injury or illness that requires homecare but that is not serious

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OFLA: Sick Child Leave for School Closures

- BOLI expanded OFLA sick child leave to include caring for the employee's child whose school or child care provider is closed due to a statewide public health emergency
- "Closure" is ongoing, intermittent, or recurring and restricts physical access to the child's school or care provider
- "Child care provider" is the place of care or person who cares for a child and can include unpaid family members
- "Place of care" includes day care facilities, preschools, before and after school care programs, schools, homes, and summer camps

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OFLA: Sick Child Leave for School Closures

- Documentation:
 - Name of child, name of school or child care provider, and statement that no other family member is willing and able to care for the child
 - If child is older than 14, statement that special circumstances exist requiring care during daylight hours

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Proposed OFLA Amendments

- During a public health emergency:
 - Reduce eligibility from 180 days to 30 days
 - Align OFLA sick child leave with BOLI rules for leave due to the closure of the employee's child's school or child care provider
- Other changes:
 - Restore OFLA eligibility to employee with break in service of less than 180 days who was OFLA eligible at the time of separation
 - Employee need not identify as female to use pregnancy-related leave for employee's own pregnancy or child birth

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Other Considerations

- FMLA
- Families First Coronavirus Relief Act: Extended Tax Credits

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Federal Family Medical Leave Act

- Covered Employer: 50 employees
- Eligible Employee:
 - Has worked for the covered employer for at least 12 months total;
 - During the 12 consecutive months prior to beginning leave has worked at least 1,250 hours; and
 - Works at a location where the employer has at least 50 employees within 75 miles
- Amount of Leave:
 - 12 weeks within any one-year period
 - May also take up to 26 weeks during a single 12-month period for military caregivers leave
- FMLA and OFLA
 - Run concurrently when employee is eligible for both OFLA and FMLA
- FMLA and PFML
 - Use of FMLA leave does not diminish an employee's available PFML benefit unless employee chooses to use PFML during FMLA

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Families First Coronavirus Relief Act: Extended Tax Credits

- Employers who have fewer than 500 employees
- Not mandatory after December 31, 2020
- Tax credit extended twice
 - Same terms for January 1, 2021 to March 31, 2021
 - New terms effective April 1, 2021 to September 30, 2021
- Still waiting on DOL/IRS guidance

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FFCRA: Qualifying Absences

1. Subject to a federal, state, or local quarantine or isolation order related to COVID-19
2. Advised by HCP to self-quarantine due to concerns related to COVID-19
3. Experiencing symptoms of COVID-19 and is seeking a medical diagnosis
4. Caring for an individual who is subject to an order as described in (1) or has been advised as described in (2)
5. Caring for a child if the school or place of care of the child has been closed, or the childcare provider of the child is unavailable, due to COVID-19 precautions
6. Experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor

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FFCRA: New Qualifying Absences

7. Seeking or awaiting results of a diagnostic test for, or a medical diagnosis of, COVID-19, and has been exposed to COVID-19 or the employer has requested such test or diagnosis
8. Obtaining immunization related to COVID-19
9. Recovering from any injury, disability, illness, or condition related to obtaining immunization for COVID-19

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FFCRA: Other Changes

- **EPSL**
 - Tax credit available for an additional 10 days (up to 80 hours) even if the employee previously used EPSL prior to April 1, 2021
- **EFMLA**
 - Paid leave is available for a full 12 weeks (assuming the employee has not previously used EFMLA or regular FMLA)
 - Total cap for EFMLA increased from \$10,000 to \$12,000
 - EFMLA now available for all the same qualifying reasons as EPSL

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FFCRA: Other Changes

- Non-discrimination principles apply:
 - Highly compensated employees
 - Full-time employees
 - Employment tenure
- Credit for unionized employers
- What about EPSL versus EFMLA?

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Final Thoughts

- Carefully check which laws apply to a particular situation
- Document and track what leave is being used and from what source
- Communicate with employees so that everyone is on the same page

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Thank You!



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