

2018 WASHINGTON LEGISLATIVE UPDATE FOR EMPLOYERS

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COMING, TO A PAYCHECK NEAR YOU IN 2019: PAID FAMILY/MEDICAL LEAVE IN WASHINGTON

A BRIEF HISTORY OF PAID FAMILY LEAVE IN WASHINGTON STATE

The Path to Paid Family & Medical Leave

2007

First Paid Family and Medical Leave bill passes the Legislature, but it did not include a funding mechanism.

2015

Governor Inslee receives a federal grant to begin designing Paid Family and Medical Leave program.

2017

Paid Family and Medical Leave bill (Title 50A RCW) passes the Legislature with a funding mechanism in place.

2018

Voluntary plan applications become available in late summer.

2019

Jan. 1: Premiums begin to be paid.

2020

Jan. 1: Employees may begin filing for benefits.

WASHINGTON'S PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM
RCW 50A.04 (EFFECTIVE 2020)

Why does it matter?

Paid Family and Medical Leave

Helps reduce the gender pay gap.



Boost employee retention and saves businesses money.

Helps achieve better health outcomes for new parents, babies and the elderly.

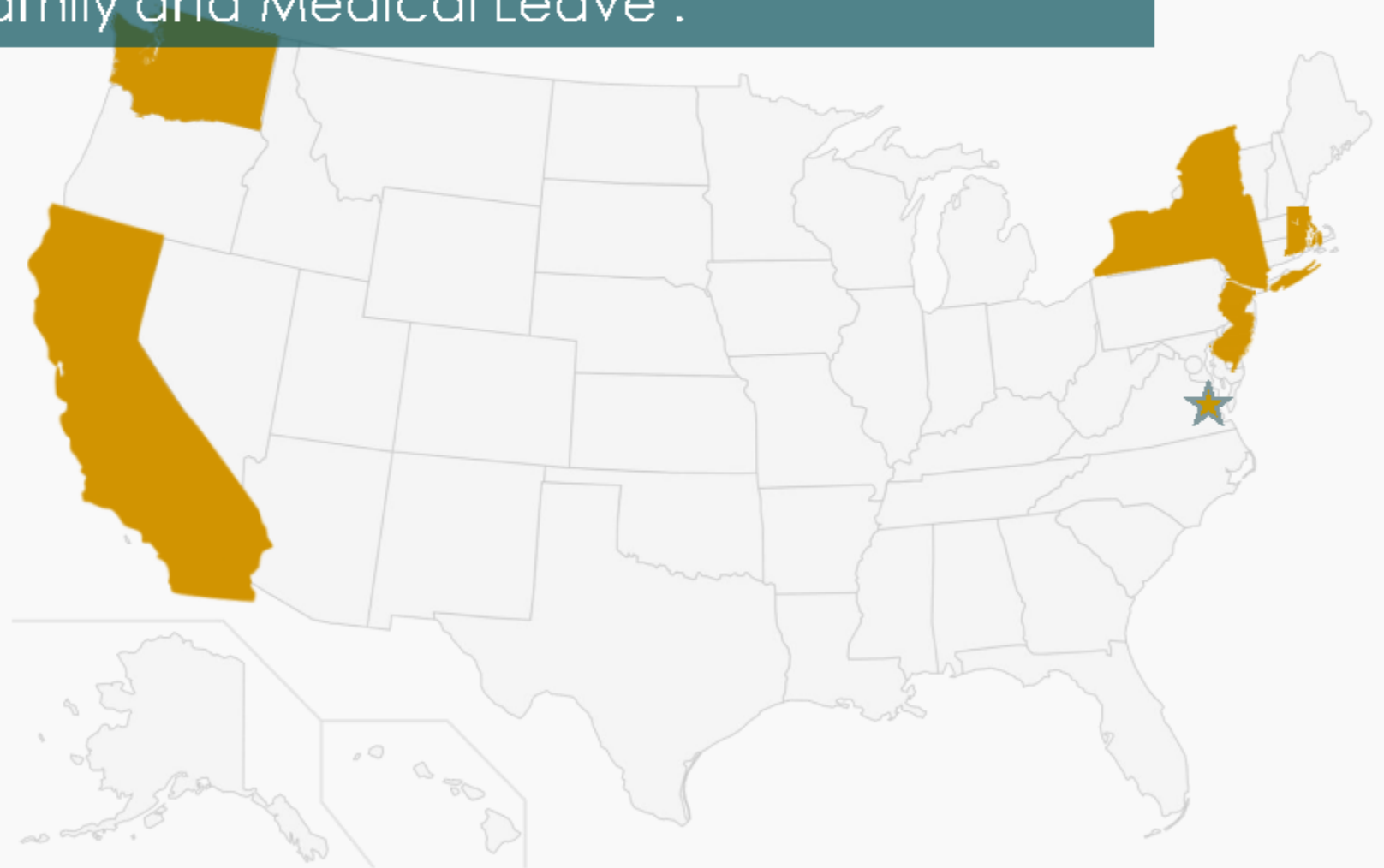


Provides increased economic stability in times of illness or crisis.

Where do we fit in nationally?

Washington is only the fifth state in the nation to offer Paid Family and Medical Leave .

- We are the first to include progressive wage replacement, allowing workers to collect up to 90% of weekly income while on leave.
- The benefit is portable between jobs.
- Most employees will pay between \$2-\$3 per/week in premiums.



*Other states California, New York, Rhode Island & New Jersey. Washington D.C. is in the process of implementing Paid Family Leave.

What is Paid Family and Medical Leave? Benefits

Paid Family and Medical Leave is a statewide insurance program.

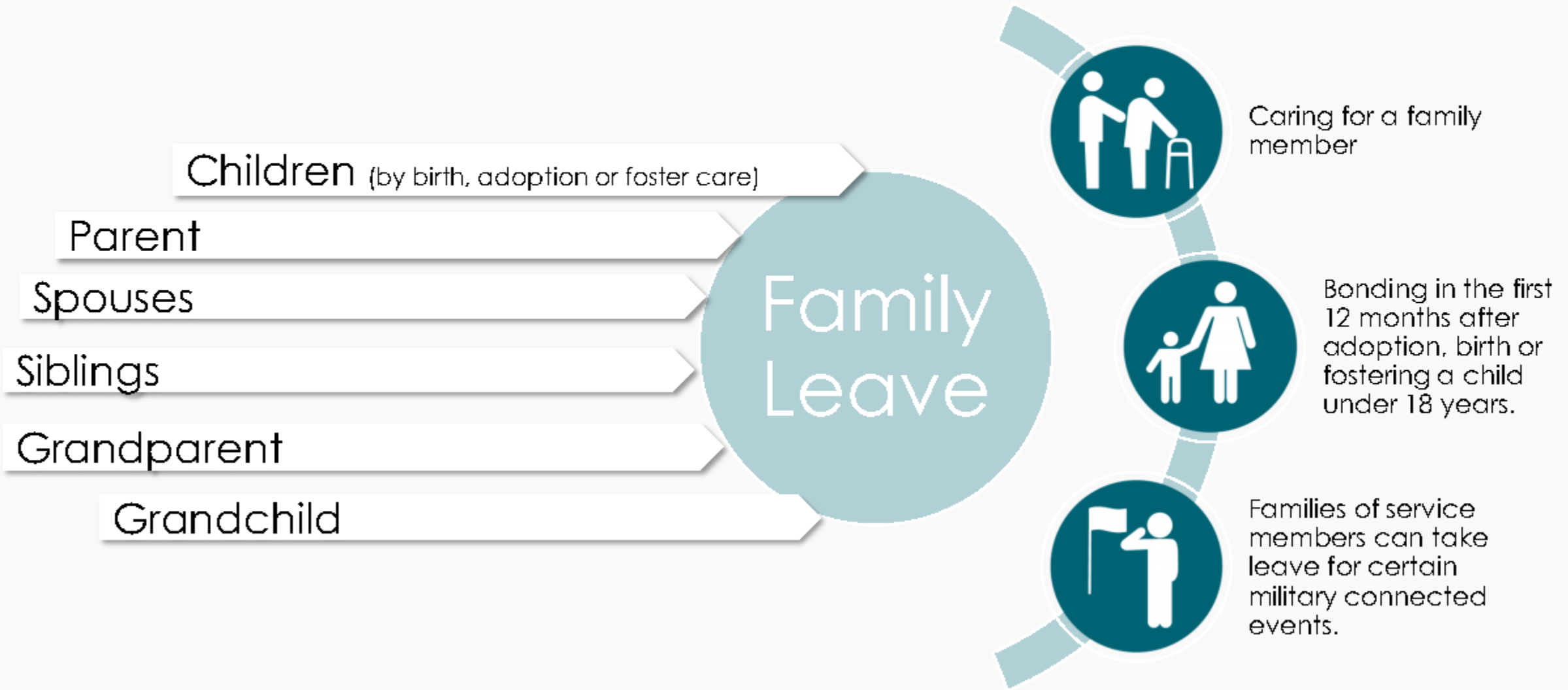
This program will be funded by premiums paid by both employers and employees.

Benefits begin in 2020. All eligible employees will receive up to 12 weeks as needed for family or medical leave.

Up to 16 weeks may be taken for a combination of family and medical leave.

Up to 18 weeks may be taken if a condition in pregnancy results in incapacity.

Covered Events



Covered Events

Self (This is what other states refer to as temporary disability)

Medical
Leave



Care for your
own medical
illness or
injury

PAID LEAVE: THREE BIG CHANGES

- **EXPANDED ELIGIBILITY FOR LEAVE**
 - Hours worked, not hours with current employer
- **EXPANDED REASONS FOR LEAVE**
 - “Family” includes more people
 - Military exigency
- **LEAVE WILL BE PAID**

WASHINGTON'S LEAVE LAW

CURRENT

Washington's Family Leave Act

RCW Chapter 49.78

STARTING IN 2020

Washington's Family and Medical
Leave Program

RCW Chapter 50A.04

WA LEAVE LAW: WHO IS ELIGIBLE?

CURRENT

Only those workers who have worked:

- 1,250 hours
- 12 months
- for current employer, who employs 50 or more employees

STARTING IN 2020

All workers who have worked:

- 820 hours (in 4 quarters)
- For any employers (it's portable)

Note: self-employed persons and independent contractors can opt in.

WA LEAVE LAW: USE

CURRENT

- **Medical Leave** – for employee’s own “serious health condition”
- **Family Leave** –
 - 1) bond with new baby, adopted or foster child; 2) care for “family member” with serious health condition

STARTING IN 2020

- **Medical Leave** (same)
- **Family Leave**– same as before, **PLUS:**

Expanded definition of “family”

Military exigency

WA LEAVE LAW: WHO IS A “FAMILY”?

CURRENT

- Child
- Parent
- Spouse
- State registered domestic partner

STARTING IN 2020

“Family Member” Expands to Also Include:

- Grandchildren
- Grandparents
- Siblings

WA LEAVE LAW: DURATION

CURRENT

- 12 weeks, in a 12 month period

STARTING IN 2020

- 12 weeks
- 16 weeks if employee needs both family and medical leave
- 18 weeks if pregnant employee has a serious health condition resulting in incapacity

WA LEAVE LAW: FUNDING AND PAY

CURRENT

- UNPAID

Note: Some employers have 1) paid leave policies, 2) short term disability insurance

STARTING IN 2020

- PAID!
- Funded through premiums paid by employer and employee
- Benefit amount depends on employee's wage
- \$1,000 max weekly

Benefit Eligibility

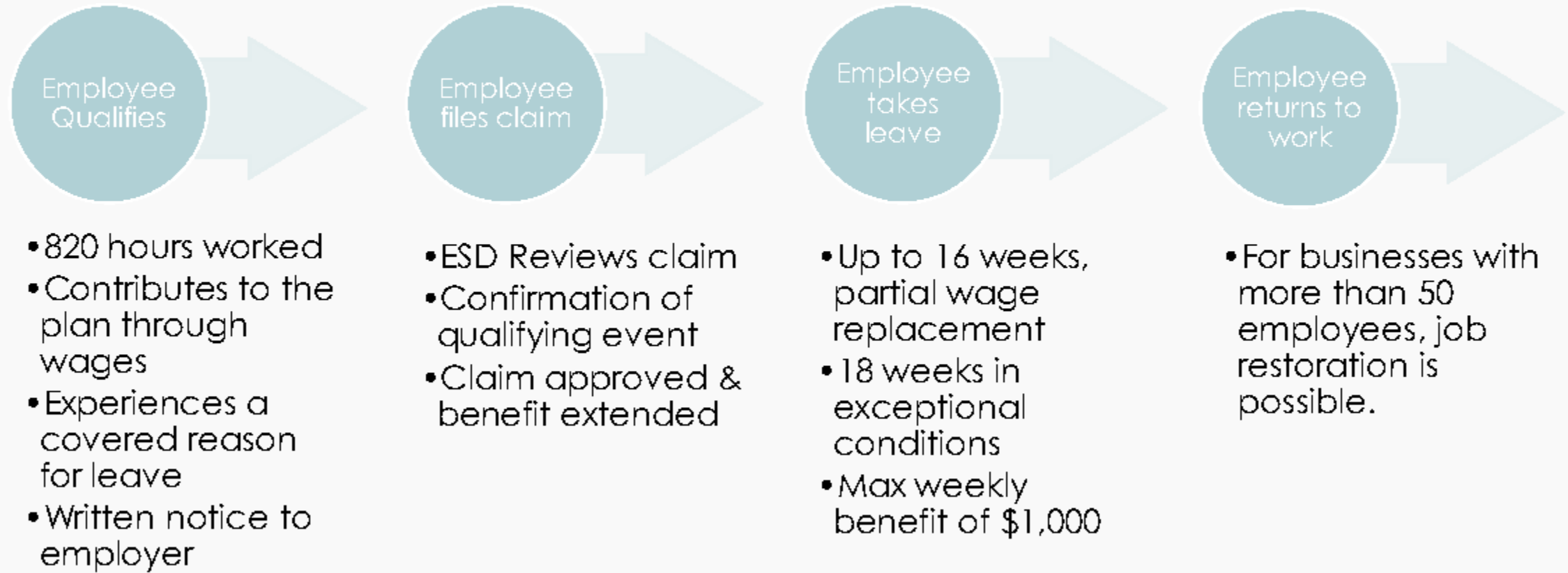


Employees covered in the state program qualify after working 820 hours in the qualifying period.

Employees covered by voluntary plans have the same criteria but must work 340 hours with an employer using a voluntary plan.

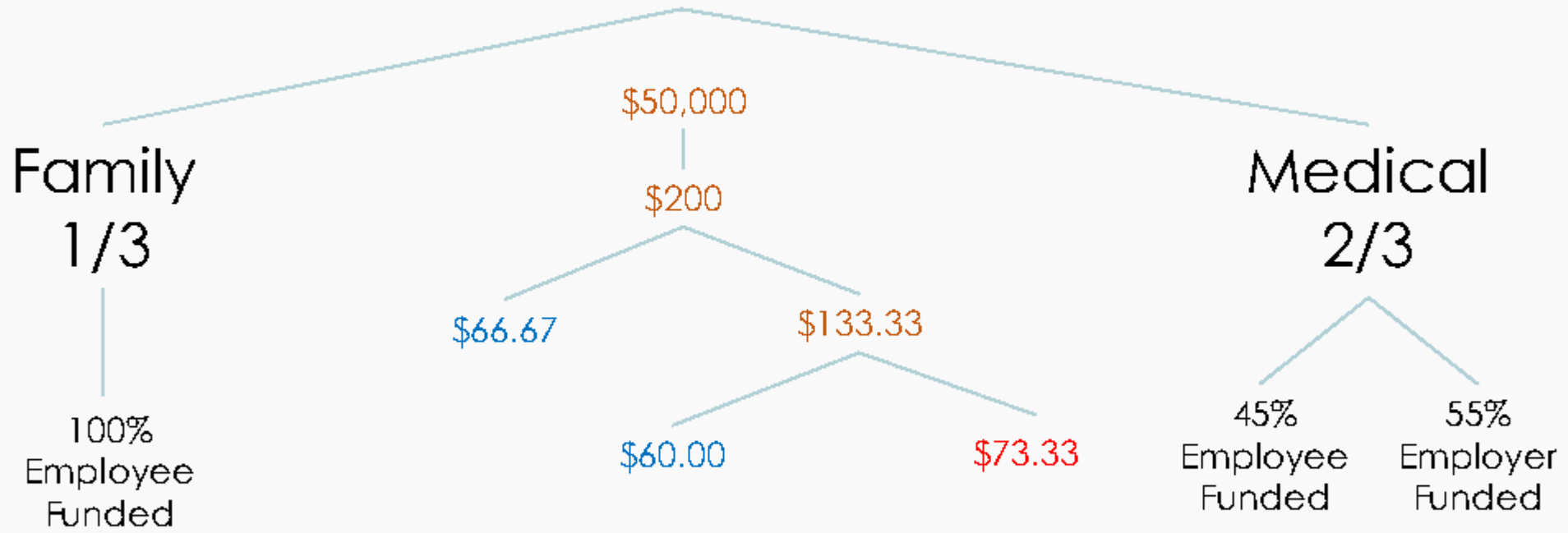
Employees who have worked 820 hours but don't yet have 340 hours with their employer in the voluntary plan may still take leave under the state program.

How It Works



How It Works: Premium Calculation

0.4%



Employee: \$126.67/year

Employer*: \$73.33/year

*Small business doesn't pay employer portion

How It Works: Weekly Benefit Estimates

For example only. This presentation is not a quote of benefits.

Weekly Wage	Projected Annual Wage (Weekly wage *52)	Estimated Total Weekly Benefit
\$480.77	\$25,000	\$432
\$576.92	\$30,000	\$524
\$961.54	\$50,000	\$764
\$1,923.08	\$100,000	\$1,244 \$1,000*

- *Weekly max benefit \$1,000, which comes out to a yearly income of about \$75,000. Weekly minimum benefit is \$100.
- Benefits subject to change with annual adjustments by statute.
- Benefits calculated by annual wages for example purposes only and don't reflect the legal process of benefit calculation.

How it works: Paperwork

- Forms similar to UI?
- FMLA forms doing double duty?
- Timelines for administration?

INTERACTIONS WITH OTHER (LEAVE) LAWS

Other Employment Laws Relating to Leave

WASHINGTON

Washington Law Against
Discrimination

- RCW 49.60
- WAC 162-30-020

Pregnancy Accommodation (RCW
43.10.005)

Workers' Compensation

State and local paid sick leave

FEDERAL

FMLA

ADAAA

USERRA/other servicemembers,
veterans, and family protections

ISSUES FOR UNIONS AND UNIONIZED COMPANIES

WAC 192-520-010

- RCW 50A does not apply to “parties covered by collective bargaining agreements in effect before 10/19/2017 unless and until the agreements expire, are reopened, or are renegotiated”
- Employers must immediately notify ESD upon the re-opening, renegotiation, or expiration of a CBA that was in effect before 10/19/2017, and must file quarterly reports after the re-opening, renegotiation, or expiration of the CBA

POLICY DRAFTING AND IMPLEMENTATION CONSIDERATIONS

Implementation - I

- **Now:** Prepare employees to see small paycheck deductions in January 2019 (or decide employer will pay the full premium).

Implementation - II

- Next 6 months: Decide whether you will offer the minimum, or more, than the law requires
 - Job protection/reinstatement even if <50 employees
 - “Top up” to employee’s full pay during leave
 - More than 12/16/18 weeks paid leave, in what circumstances
 - More than 12/16/18 weeks leave — unpaid

Implementation - III

- Before 2019 renewal: Adjust STD/LTD insurance coverage (after discussion with broker)
- Q3 or Q4 2019 (or sooner): Tell employees what to expect
 - Update policies and handbooks
 - Company-wide announcement
 - Capitalize on the benefit in recruiting

Implementation - IV

- Q3 or Q4 2019 (or sooner) (and ongoing):
anticipate and plan staffing coverage for employees taking leave
 - Temp agency contract or connection
 - Floater/Moderate extra recruitment
 - Cross-train
 - Create process or checklist for coverage
 - Build team culture of support and acceptance

New Laws Effective June 2018

Fair Chance Act

HB 1298

- Earlier this year, Governor Inslee signed the Fair Chance Act
 - Effective June 6, 2018
 - “Bans the Box” in Washington
 - Prohibits employers from asking about arrests and convictions before an applicant is determined otherwise qualified for the position sought
 - May not have policies that automatically exclude those with criminal records before determining if they are qualified
 - Exceptions for those employers working with children and vulnerable adults and other limited exceptions

Fair Chance Act

HB 1298

- Unlawful practices
 - Including questions about arrests and convictions on employment applications
 - Inquiring about arrests or convictions orally or in writing
 - Receiving information through a criminal background check
 - Otherwise obtaining the applicant's criminal record until after initial determination that applicant is otherwise qualified
 - No advertisements that state “no felons,” etc.

Fair Chance Act

HB 1298

- **Action:**
 - Review employment applications and interview questions for compliance; remove any questions that solicit information about arrests or convictions
 - Train those conducting interviews

Gender Pay Equity

HB 1506

- Amendments to Washington's Equal Pay statute
 - Prohibits reliance on past earning history to justify pay differentials or to justify compensation at hire
 - Prohibits non-disclosure agreements, contract provisions, or policies that prevent employees from disclosing or sharing information about pay
 - Prohibits discharging employees for discussing wages, inquiring about wages or lack of opportunity for advancement, and aiding an employee in exercising their rights

Gender Pay Equity

HB 1506

- **Action:**
 - Best practice is to not ask about prior salary in the recruiting and hiring process; instead, ask for desired salary
 - Considering listing industry experience as desired but not required qualification to increase female applicants to historically male-dominated jobs or industries
 - Remove any “black box” provisions in employment contracts or policies
 - Considering using defined pay criteria or pay bands

Model Sexual Harassment Policies and Best Practices

SB 6471

- Directs the Human Rights Commission to convene a stakeholder group to develop model policies and best practices to keep workplaces safe from sexual harassment

Model Sexual Harassment Policies and Best Practices

SB 6471

- Action: Review existing policies once model policies and best practices established

Nondisclosure Agreements in Civil Actions for Sexual Harassment or Assault

SB 6068

- Voids any provision of a nondisclosure policy or agreement that would limit, prevent, or punish disclosure of facts about sexual assault in a civil or administrative hearing
 - Sexual harassment claims only

Nondisclosure Agreements in Civil Actions for Sexual Harassment or Assault

SB 6068

- Action:
 - Review severance agreements and employment agreements
 - Consider carveouts in confidentiality provisions for the narrow purpose of testifying in civil or administrative hearings regarding sexual harassment and sexual assault

Employees' Rights to Bring Suit in Public Forum

SB 6313

- A provision in an employment agreement is void and unenforceable if it requires employees to waive their right to pursue a state or federal discrimination claim publicly

Employees' Rights to Bring Suit in Public Forum

SB 6313

- Action:
 - Revise template arbitration clauses in arbitration agreements, non-disclosure agreements, and employment contracts so they include carveouts for discrimination claims

Employees' Rights to Disclose Workplace Harassment and Sexual Assault

SB 5996

- Employers may not require employees to sign non-disclosure agreements, waivers, or other documents that prevent disclosure of sexual harassment as a term of employment
 - Employers may not discharge or retaliate against employees for such disclosures
 - Does not prohibit settlement agreements that include confidentiality provisions if the claim is for sexual harassment

Employees' Rights to Disclose Workplace Harassment and Sexual Assault

SB 5996

- Action:
 - Review non-disclosure agreements and employment agreements' confidentiality provisions
 - Consider including carveout for sexual harassment if necessary

Protection Against Discrimination for Victims of Domestic Violence, Sexual Assault, or Stalking

HB 2661

- Outlines the rights of survivors to seek and maintain employment without fear of facing discrimination and to have reasonable safety accommodations in the workplace

Protection Against Discrimination for Victims of Domestic Violence, Sexual Assault, or Stalking

HB 2661

- Action:
 - Train HR managers and supervisors
 - Consider including accommodation language in domestic violence leave policies

Questions?