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PROTECTED
LEAVES QUICK
REFERENCE
GUIDE

Navigating Legally Protected Time Off

SUMMARY

This employer guide outlines the most common reasons for employees to take protected time off, also referred to as “leave”, including: Workers’ Comp, Americans with Disability Act, Family Medical Leave Act, Oregon Family Leave Act, Oregon Sick Time, Washington Paid Family and Medical Leave, and Washington Paid Sick Leave.



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Key Terms to Know

Reasonable Accommodation

Reasonable accommodation, as mentioned on the EEOC.gov website, is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

For example, reasonable accommodation may include:

- acquiring or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

Reasonable accommodation also must be made to enable an individual with a disability to participate in the application process, and to enjoy benefits and privileges of employment equal to those available to other employees.

It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business. Undue hardship means that the accommodation would require significant difficulty or expense.

Essential Job Functions

Essential functions, as defined by the Americans with Disabilities Act of 1990, are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance. (This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting or firing).

Factors to consider in determining if a function is essential include:

- whether the reason the position exists is to perform that function,
- the number of other employees available to perform the function or among whom the performance of the function can be distributed, and
- the degree of expertise or skill required to perform the function.

Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by EEOC as evidence of essential functions. Other kinds of evidence that EEOC will consider include:

- the actual work experience of present or past employees in the job,
- the time spent performing a function,
- the consequences of not requiring that an employee perform a function, and
- the terms of a collective bargaining agreement.

ADA (Americans with Disability Act of 1990)

What is it?

Per the ADA website, the [Americans with Disabilities Act of 1990](#) (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. Determination of whether a person has an ADA "disability" must take into consideration whether the person is substantially limited in performing a major life activity **when using a mitigating measure (also commonly referred to as "reasonable accommodation"**. This means that if a person has little or no difficulty performing any major life activity because s/he uses a mitigating measure, then that person will not meet the ADA's first definition of "disability."

What employer size does it apply to?

This law applies to employers with 15 or more employees.

Who is protected?

According to Title I of the ADA, protection extends to qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a *disability* if he has a physical or mental impairment that *substantially limits a major life activity*. The ADA also protects individuals who have a *record of a substantially limiting impairment*, and people who are *regarded as having a substantially limiting impairment*.

To be protected under the ADA, an individual must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

An individual with a disability must also be qualified to perform the essential functions of the job with or without reasonable accommodation, in order to be protected by the ADA. This means that the applicant or employee must:

- satisfy your job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related; and
- be able to perform those tasks that are essential to the job, with or without reasonable accommodation.



The ADA does not interfere with your right to hire the best qualified applicant. Nor does the ADA impose any affirmative action obligations. The ADA simply prohibits you from discriminating against a qualified applicant or employee because of her disability.

How do I know my employee needs an accommodation?

The employer's response will generally be triggered by a request from an individual with a disability. Many times, this employee will be able to suggest a possible accommodation. It's important to consider each accommodation individually as the nature and degree of a disabling condition and the requirements of the job will vary.

The employer is not responsible for accommodating a condition that it is unaware of; however, it does not mean that an applicant or employee must notify the employer of a disability if it is obvious.

What type of notices are required?

Under ADA, employers are required to post a notice in an accessible format to applicants, employees and members of labor organizations, describing the provisions of the Act. The EEOC will provide employers with a poster summarizing these and other Federal legal requirements for nondiscrimination. EEOC will also provide guidance on making this information available in accessible formats for people with disabilities.

What can I ask my employee regarding their disability?

Per the EEOC, it is unlawful to:

- ask an applicant whether she is disabled or about the nature or severity of a disability, or
- to require the applicant to take a medical examination before making a job offer.

You can:

- ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. "Are you able to perform the essential job functions with or without an accommodation?"
- ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will perform job-related functions.

After a job offer is made and prior to the commencement of employment duties, you may require that an applicant take a medical examination *if everyone who will be working in that job category must also take the examination.*

You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, *you must be able to show that the reasons for exclusion are job related and necessary for conduct of*



your business. You also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions. Once you have hired an applicant, you cannot require a medical examination or ask an employee questions about disability unless you can show that these requirements are job related and necessary for the conduct of your business.

How long do I have to accommodate this request?

The accommodation could be indefinite, just depending on the nature and severity of the disability.

Are there any exceptions to this rule?

Yes. According to the EEOC, anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use.

What's important to document?

All requests for accommodation and accommodations granted should be recorded by date, time, employee, nature of request, and accommodation made for retention purposes and must be kept confidential in a separate medical file. This includes results of all medical examinations or information from inquiries about a disability.

Where can I find more information about this subject?

There is a ton of additional information to be found online at the following sites listed below, including a very help Q & A regarding more specific examples of medical conditions, processes, notices, permitted requests for medical certifications and reasonable accommodations.

<https://www.eeoc.gov/facts/ada18.html>

<https://www.eeoc.gov/facts/ada17.html>

Workers' Compensation

What is it?

In plain English, workers' compensation covers injuries or illnesses that are related to the employee's job. An injury does not necessarily have to happen at the workplace to be considered AOE/COE (arising out of employment or during the course of employment).

What employer size does it apply to?

All companies with at least 1 employee must carrier workers' compensation coverage. Washington State companies must either register with L&I (Labor & Industries) or obtain a private plan. Common carriers for Oregon Workers' Comp include Saif, CHUBB and Travelers.

Who is protected?

Examples of covered workers' compensation incidents include injuries that happen while employees are traveling on business, running an office errand, or attending a business-related social function, as well as sudden accidents like falling off scaffolding on the job. [Injuries and illnesses covered by workers' comp](#) may also include:

- cumulative trauma, such as [repetitive strain or stress injuries](#) that develop over time from performing the same physical tasks over and over; and
- occupational diseases that result from workplace conditions, such as lung disease or cancer from exposure to toxic chemicals or (in some states) heart disease or digestive problems related to on-the-job stress.

Under both federal and state laws, employers are prohibited from firing, [retaliating against](#), or otherwise discriminating against employees who file worker's compensation claims.

How do I know my employee needs an accommodation?

Employers must provide a claim form within 24 hours after an employee has given the employer notice of an on-the-job-injury. The employer may still be obligated to provide the forms if it knew about the injury, regardless of the employee properly notifying the employer. Employers must also supply the employee with written information (usually a pamphlet) about the employee's rights under the workers' comp system. The material should include details about available benefits and the process on how to file a claim.

Following notification of an incident, the employer will:

- Report Incidents to Appropriate Parties (workers' comp carrier)
- Complete Injury/Illness Reports
- File Injury/Illness Reports
- Stay in Contact with the Worker's Compensation Carrier
- Stay in Contact with the Employee
- Create a Timeline for Return to Work
- Return the Employee to Work
- Continue Leave or Terminate When an Employee Is Unable to Return to Work

What type of notices are required?

In addition to carrying insurance to cover work-related injuries, employers must post required notices in a convenient location frequented by employees during working hours. The notices or posters must:

- include important information about employees' right, including the right to receive medical treatment,
- give details about available workers' compensation benefits, and
- provide the name of the company's workers' compensation carrier, or the fact that the employer is self-insured, as well as who is responsible for adjusting claims.

Employers must also provide the same notice to new hires.

What can I ask my employee regarding their medical condition?

When dealing with a workers' compensation incident, it is important to know the facts surrounding the injury or illness. An employer needs to know:

1. What happened?
2. Who was around and were there any witnesses?
3. When did the incident occur (date and time)?
4. Where did it occur?
5. Why did it happen (this may be theory or fact)?
6. How did it happen?
7. How long the employee will be off or on light-duty (this may be provided by the claims rep or the attending physician notes)?
8. What kind of accommodations are being requested?

How long do I have to accommodate this request?

The length of leave and/or accommodation will be determined by the nature and severity of the incident. This will be communicated by the Workers' Compensation representative and/or doctors notes provided by the employee.

Creating a timeline for the employee's return to work is essential, as is making the determination about potential restrictions that may require accommodation and whether the employer will be able to accommodate the employee's needs. An employer may also need to consider if workers' compensation benefits will run concurrently with leave under the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), state leave laws or a company-provided leave of absence. The employer should have a policy in place that includes how leave interacts with workers' compensation.

Are there any exceptions to this rule?

Workers' comp generally won't cover injuries that were caused by the employee's intoxication or use of illegal drugs. Some states also deny coverage in other situations involving misconduct, including injuries that:

- were self-inflicted
- resulted from a fight the injured employee started, or
- happened when the employee was committing a felony or serious crime.

Additionally, in various states, injuries may not be covered if they happened while the employees were violating company policy or engaging in "horseplay" (that is, fooling around). But courts may still decide those injuries are work-related if the employer condoned the behavior, or it was an accepted or common part of the working environment.



State laws often have special rules for workers' comp claims that are filed after the employee is fired or laid off.

What's important to document?

- What happened?
- Who was around and were there any witnesses?
- When did the incident occur (date and time)?
- Where did it occur?
- Why did it happen (this may be theory or fact)?
- How did it happen?
- How long the employee will be off or on light-duty (this may be provided by the claims rep or the attending physician notes)?
- What kind of accommodations are being requested?

Additionally, this information needs to be kept confidential and in a separate file.

Where can I find more information about this subject?

More information and guidance on Workers' Compensation can be online and at the following sites:

<https://www.nolo.com/legal-encyclopedia/workers-compensation-basics-employers-30333.html>

<https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/administerworkers'compensationclaim.aspx>

<https://www.thebalancesmb.com/workers-compensation-7-basic-facts-for-employers-398527>

FMLA (Family Medical Leave Act)

What is it?

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Per dol.gov, the Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave a year and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

The FMLA also provides certain military family leave entitlements. Eligible employees may take FMLA leave for specified reasons related to certain military deployments of their family

members. Additionally, they may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.

What employer size does it apply to?

This law applies to employers with 50 or more employees.

Who is protected?

Employees who work for a covered employer, have been employed for 12 months and have worked at least 1250 hours are protected.

Additionally, according to dol.gov, an employee must have at least one of the qualifying events to access the following benefits:

- Twelve workweeks of unpaid leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee's spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- Twenty-six workweeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

How do I know my employee needs an accommodation?

The employee may describe or mention a situation which potentially falls in the "Qualifying Event" category. Once an employee brings a potential "Qualifying Event" to your attention, the employer must determine eligibility. This can be assessed by requesting more information about the leave through a "Leave Request" form. If it is unclear if the event qualifies, the employer may request a medical certification to be completed by the attending physician. The medical certification form would accompany the Eligibility and Rights & Responsibilities Notice. This notice must be provided within 5 days of being notified of the request for leave.

The employee has 15 days to return the medical certification. If, after the medical certification form has been completed, it is determined to be a Qualifying Event, the employer must participate in the "Interactive Process". During this process, the employer and employee discuss requested accommodations, length of leave and establish communication expectations during the leave.

What type of notices are required?

There are pretty clear requirements regarding notices and posters for FMLA. According to the DOL, the FMLA poster:

- Must be displayed in plain view where all employees and applicants can readily see it and must have large enough text so it can be easily read.
- The information displayed on the poster must explain the FMLA provisions and provide information on how to **file a complaint with the Wage and Hour Division**.
- This poster must be displayed even if no employees are currently eligible for FMLA leave.
- If a significant portion of an employer's employees do not read and write English, the employer must provide the General Notice in a language in which they can read and write. Spanish language FMLA posters are available from the nearest Wage and Hour Division office or online at dol.gov/whd/fmla. When providing FMLA notices to sensory-impaired individuals, employers must also comply with all applicable requirements under federal and state law.

In the General Notice:

- It must also provide each employee with a general notice about the FMLA in the employer's employee handbook or other written materials about leave and benefits. If no handbook or written leave materials exist, the employer must distribute this general notice to each new employee upon hire.
- This general notice requirement can be met by either duplicating the general notice language found on the Department's FMLA Poster or by using another format as long as the information provided includes, at a minimum, all the information contained in the Department's FMLA Poster. The general notice may be distributed electronically provided all the requirements are met.

What can I ask my employee regarding their medical condition?

The employer may ask the employee to have a medical certification completed by the attending physician. It is important to keep data regarding the employee's medical circumstances confidential and only share limited information with those that "need to know", such as a manager to determine scheduling and accommodations.

How long do I have to accommodate this request?

An accommodation could be as long as 12 weeks, with a possible extension of 12 more weeks for qualifying events and can be consecutively used or intermittently used.

Are there any exceptions to this rule?

According to the DOL, if an employee fails to submit a properly requested medical certification (absent sufficient explanation of the delay) within the timeframe established, FMLA protection for the leave may be delayed or denied. If the employee never provides a medical certification, then the leave is not FMLA leave.



If an employee fails to submit a properly requested fitness-for-duty certification, the employer may delay job restoration until the employee provides the certification. If the employee never provides the certification, he or she may be denied reinstatement.

What's important to document?

It is important for the employer to maintain records regarding employee requests for leave including:

- Date and time of the original notification by the employee
- Nature of the condition, requested leave and accommodation
- Date the Eligibility and Rights & Responsibilities notice was provided
- Completed Medical Certification form
- Additional documentation from physician
- Established communication plan
- All accommodations made
- Amount of FMLA used
- Date employee returned to work

Where can I find more information about this subject?

More information and guidance on FMLA can be online and at the following sites:

<https://www.dol.gov/whd/fmla/employerguide.pdf>

<https://www.dol.gov/whd/fmla/fmla-faqs.htm>

www.dol.gov/whd/fmla

OFLA (Oregon Family Leave Act)

What is it?

According to Bureau of Labor and Industries (BOLI), The Oregon Family Leave Act (OFLA) provides eligible workers with protected leave to care for themselves or family members in cases of death, illness, injury, childbirth, adoption and foster placement.

What employer size does it apply to?

Employers with 25 or more employees.

Who is protected?

Employees must be employed for the 180-day calendar period immediately preceding the leave, have worked at least an average of 25 hours per week during the 180-day period and be working for an eligible employer.

Exception 1



For parental leave, workers are eligible after being employed for 180 calendar days, without regard to the number of hours worked.

Exception 2

For Oregon Military Family Leave, workers are eligible if they have worked at least an average of 20 hours per week, without regard to the duration of employment.

Exception 3

For compensable Workers Compensation injuries, for certain Workers Compensation injuries involving denied and then accepted claims and for certain accepted claims involving more than one employer.

Exception 4

When an employee is caring for a family member with a serious health condition and the same family member dies, the employee need not requalify with the 25 hour per week average to be eligible for bereavement leave

How do I know my employee needs an accommodation?

If an employee requests leave for any of the following reasons, the employer is obligated to accommodate the request.

- Parental Leave during the year following the birth of a child or adoption or foster placement of a child under 18, or a child 18 or older if incapable of self-care because of a mental or physical disability. Parental leave includes leave to effectuate the legal process required for foster placement or adoption.
- Serious health condition leave for the employee's own serious health condition, or to care for a spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent in law, parent of same-gender domestic partner, grandparent, grandchild, a person whom the employee is or was a relationship of in loco parentis, biological, adopted, foster or step child of an employee or the child of an employee's same-gender domestic partner.
- Pregnancy disability leave (a form of serious health condition leave) taken by a female employee for an incapacity related to pregnancy or childbirth, occurring before or after the birth of the child, or for prenatal care.
- Sick child leave taken to care for an employee's child with an illness or injury that requires home care but is not a serious health condition.
- Bereavement leave to deal with the death of a family member.
- Oregon Military Family Leave is taken by the spouse or same gender domestic partner of a service member who has been called to active duty or notified of an impending call to active duty or is on leave from active duty during a period of military conflict.

What type of notices are required?

A notice should be posted with other employment-related posters at each company location. A copy can be printed here: <https://www.oregon.gov/boli/TA/docs/OFLA-Poster.pdf>.

Additionally, employees may be required to give 30 days-notice in advance of leave, unless the leave is taken for an emergency.

Employers may require that notice is given in writing. In an emergency, employees must give verbal notice within 24 hours of starting a leave.

What can I ask my employee regarding their medical condition?

The employer may ask the employee to have a medical certification completed by the attending physician. It is important to keep data regarding the employee's medical circumstances confidential and only share limited information with those that "need to know", such as a manager to determine scheduling and accommodations.

How long do I have to accommodate this request?

Employers are generally required to provide a maximum of 12 weeks of family leave within the employer's 12-month leave year. There are few exceptions where additional leave may be granted below:

- A woman using pregnancy disability leave is entitled to 12 additional weeks of leave in the same leave year for any qualifying OFLA purpose.
- A man or woman using a full 12 weeks of parental leave is entitled to take up to 12 additional weeks for the purpose of sick child leave.
- Employees are entitled to 2 weeks of bereavement leave to be taken within 60 days of the notice of the death of a covered family member.
- A spouse or same gender domestic partner of a service member is entitled to a total of 14 days of leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment and when the military spouse is on leave from deployment.

Although Family Leave is unpaid, employees are entitled to use any accrued paid vacation, sick or other paid leave.

Employees are entitled to group health insurance benefits during family leave as if they continued working.

Are there any exceptions to this rule?

There are no exceptions to this rule if the employee meets the eligibility requirements and is requesting leave for a qualifying event.



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What's important to document?

It is important for the employer to maintain records regarding employee requests for leave including:

- Date and time of the original notification by the employee
- Nature of the condition, requested leave and accommodation
- Date the notice was provided
- Completed Medical Certification form
- Additional documentation from physician
- Established communication plan
- All accommodations made
- Amount of leave used
- Date employee returned to work

Where can I find more information about this subject?

More information and guidance on OFLA can be online and at the following sites:

<https://www.oregon.gov/boli/TA/docs/OFLA-Poster.pdf>

www.oregon.gov/BOLI

Oregon Sick Time

What is it?

Effective January 1, 2016, Oregon Sick Time was enacted to require employers to allow employees to accrue 1 hour of sick time for every 30 hours worked or 1-1/3 hours for every 40 hours worked.

It is unlawful for an employer to take retaliatory personnel action for exercising rights or attempting to exercise rights under Oregon's sick time law.

What employer size does it apply to?

All employers with 10 or more employees (at least 6 for employers located in Portland) in Oregon must provide up to 40 hours of paid leave per year.

Employers with less than 10 employees (less than 6 for employers located in Portland) must provide up to 40 hours of unpaid protected sick time.

Who is protected?

All employees who work in Oregon are protected under the Oregon Sick Time and must be able to accrue at least of 40 hours of paid or unpaid time, depending on the size of the company.

How do I know my employee needs an accommodation?

Any employee who requests leave for the following reasons are protected under the Oregon Sick Leave.

- To care for the employee or the employee's family member with a mental or physical illness, injury, or health condition, need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or need for preventive medical care;
- To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability, completed within 12 months after birth or placement of the child;
- To recover from or seek treatment for a health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position;
- Absences associated with the death of a family member by:
 - Attending the funeral or alternative to a funeral of the family member;
 - Making arrangements necessitated by the death of the family member; or
 - Grieving the death of the family member;

Absences related to domestic violence, harassment, sexual assault or stalking:

- To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking;
- To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee's minor child or dependent;
- To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking;
- To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent; or
- To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent;

In the event of a public health emergency, including but not limited to:

- Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;
- A determination by a lawful public health authority or a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others; or
- The exclusion of the employee from workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons.

What type of notices are required?

Sick time law requires that employers provide written notification at least quarterly to employees of their accrued and unused sick time

What can I ask my employee regarding their medical condition?

According to BOLI Technical Assistance, an employer may request medical verification under the following circumstances:

- More than three consecutively scheduled workdays of sick time;
- The need for sick time is foreseeable and is projected to last more than three consecutively scheduled workdays; or
- An employee commences sick time without providing notice required by the employer's sick time policy (which may not be more than 10 days' advance notice for foreseeable use of sick time or more notice than is practicable in the event of an unforeseeable use of sick time); or
- An employer has sufficient evidence to suspect that an employee is abusing sick time, including engaging in a pattern of absenteeism, regardless of whether the employee has used sick time for more than three consecutive days.

An employer may not require medical verification in advance of sick time that is expected to last less than three consecutive scheduled workdays.

NOTE: The employer is required to pay any associated costs for providing medical verification or certification, including lost wages that are not paid under a health benefit plan in which the employee is enrolled. An employer may not require that the verification or certification explain the nature of the illness or details related to domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

How long do I have to accommodate this request?

Employers must allow employees to use up to at least 40 hours of accrued sick time annually.

Are there any exceptions to this rule?

The following are possible instances where an exception might apply.

Owners

- IF they are a sole proprietor
- IF company is setup as Corp, they are likely an employee and therefore qualified for Oregon Sick Time.

CBA (Collective Bargaining Agreement)

- IF the employees also receive their employment-related benefits through a joint multi-employer-employee trust or benefit plan and be employed through a hiring hall or similar referral system operated by a labor organization or a third party, they may be exempt.

Work-study

- ORS 653.601(1)(c) indicates that participants in work-study programs that provide “students in secondary or post-secondary educational institutions with employment opportunities for financial or vocational training” are not “employees” for purposes of the sick time law. This exception applies to any student employed in a work-study program by a secondary or post-secondary educational institution or to a student in a qualified vocational training program.

What’s important to document?

In addition to documentation requirements under “What type of notices are required?”, it a good idea to keep a log of the following:

- Dates employee is absent
- Method for notification
- Nature of absence, if disclosed (sick, disability, personal, vacation)
- Doctors notes provided by employee
- Additional documentation from physician
- Amount of leave used

Where can I find more information about this subject?

More information and guidance on Oregon Sick Time can be online and at the following sites:

<https://www.oregon.gov/boli/WHD/OST/pages/index.aspx>

https://www.oregon.gov/boli/TA/Pages/T_FAQ_OregonSickTime.aspx

Washington Paid Family & Medical Leave

What is it?

Paid Family and Medical Leave is a statewide insurance program to care for yourself or your family in life's most trying times. It is a statewide insurance program that will be funded by premiums paid by both employees and many employers. Beginning January 1, 2019, the employer is responsible for withholding premiums from the employee's paycheck equaling .4% of the employee's annual salary. The employer will contribute 37% of the .4% and the employee will contribute the balance of 63% of the .4%.

What employer size does it apply to?

This law applies to employers with 50 or more employees.

Who is protected?

Employees who have worked 820 hours for a Washington-based employer during the previous year are eligible to apply for benefits in January 2020.

Moving forward in 2020, employees must work for a qualified company, have worked for at least 12 months and worked at least 1250 hours in the past 12 months.

How do I know my employee needs an accommodation?

If the employee expresses a need for leave for any of the following, the employer has an obligation under Washington Paid Family and Medical Leave Program to accommodate the request.

- An employee's own medical condition
- Bonding with a child (birth, foster, or adoption)
- Caring for family members
- Certain military-related events

Please keep in mind that the employee may also be eligible for FMLA. The state of Washington has not yet determined how WPFML will interact with FMLA.

What type of notices are required?

According to the Washington Paid Family and Medical Leave Program website, employers will have a responsibility to:

- A mandatory poster to notify employees of the program will be available before Jan. 1, 2020. If you would like something to share with your employees prior to that, download our **optional** [paystub insert](#) to distribute or post.

Additionally, the employer will be required to:

- Report employee wages, hours worked and other information for all employees.
- Collect and remit [premiums](#).

What can I ask my employee regarding their medical condition?

It is unclear if medical certifications are permitted to request under the WPFML Program, however, if an employee experiences a qualifying event, as described below, they will qualify. Leave events can be either *Family* or *Medical*.

Family Leave

- Care and bond after a baby's birth or the placement of a child younger than 18
- Care for a family member experiencing an illness or medical event
- Certain military-connected events

Medical Leave

- Care for yourself in relation to an illness or medical event

How long do I have to accommodate this request?

The employee is entitled up to 12 weeks of wage replacement with a weekly minimum of \$100 and a weekly maximum of \$1000, adjusted annually. The employees' exact benefit is determined by the earned wages, the state median income, and other factors.

Are there any exceptions to this rule?

All Washington employers, including out-of-state employers with Washington employees, are required to participate with few exceptions.

Exceptions:

- Self-employed individuals ([May opt-in](#))
- Federal employees
- Federally recognized tribes ([May opt-in](#))

In rare cases, an employer may be granted a conditional premium waiver for an employee who meets three specific conditions:

- Physically based outside of the state of Washington; and
- Employed in Washington state on a limited or temporary basis; and
- Not expected to be employed by any employer in the state for 820 hours or more in a qualifying period (four consecutive reporting quarters).

More information can be found on the [conditional waivers page](#).

What's important to document?

It is important for the employer to maintain records regarding employee requests for leave including:

- Report employee wages, hours worked and other information for all employees.
- Date and time of the original notification by the employee

- Nature of the condition, requested leave and accommodation
- Date the notice was provided
- Medical documentation provided
- Additional documentation from physician
- Established communication plan
- All accommodations made
- Amount of leave used
- Date employee returned to work

Where can I find more information about this subject?

More information and guidance on Washington Paid Family and Medical Leave can be online and at the following sites:

esd.wa.gov/paid-family-medical-leave

<https://paidleave.wa.gov/waivers>

<https://paidleave.wa.gov/healthcare-providers>

<https://paidleave.wa.gov/employers>

Washington Paid Sick Leave

What is it?

Washington State employers are now required to provide you with paid sick leave. The [paid sick leave law](#) was one of several changes to worker rights mandated by Initiative 1433, approved by Washington voters in 2016.

The law requires employees to earn at least one hour of paid sick leave for every 40 hours worked. The employer may provide more; however, they must be at least as generous as the WPSL.

Paid sick leave accrual begins on the employees first day of work and may begin using earned paid sick leave 90 calendar days after date of hire. If an employee separates from employment and are rehired within 12 months, any days worked before leaving your job will count toward this 90-day period.

Employers must allow the employee to roll over up to 40 hours of unused accrued paid sick leave into the next year.

What employer size does it apply to?

All employers are subject to participate in Washington Paid Sick Leave.

Who is protected?

All employees are protected under the WPSL; however, paid time is not legally granted until the employee has reached their 90 day of employment.

How do I know my employee needs an accommodation?

Any employee who requests leave for the following reasons are protected under the Washington Paid Sick Leave.

- For a mental or physical illness, injury, or health condition or if the employee need a medical diagnosis or preventative medical care.
- If a family member (see below) needs care for a mental or physical illness, injury, or health condition, or needs a medical diagnosis or preventative medical care.
- If the employees' workplace or employees' child's school or place of care has been closed for any health reason by order of a public health official.
- If the employee is absent from work for reasons that qualify for leave under the state's [Domestic Violence Leave Act \(DVLA\)](#).


Family members are defined as:

- **Child** - This may include a biological, adopted, or foster child, stepchild, or child you are legally responsible for.
- **Parent** - This may include your biological, adoptive, or foster parent, your stepparent, or someone who was your legal guardian or their spouse or registered domestic partner – or a person who was legally responsible for you when you were a minor.
- **Spouse.**
- **Registered domestic partner.**
- **Grandparent.**
- **Grandchild.**
- **Sibling.**

What type of notices are required?

According to L&I, all Washington employers must notify their employees of this right in writing (paper or electronic).

The employer must give the employee an initial, one-time notice explaining:

- That the employee is legally entitled to paid sick leave.
- How much paid sick leave will be earned.
- When paid sick leave may be used.
- Employers are prohibited from retaliating against an employee for using paid sick leave for any reason allowed by this law, or for exercising other rights within the Minimum Wage Act.
-  [See an example of a notice.](#) (67 KB Word) [\(En Español\)](#).

and

At least once a month, the employer must give a statement (paper or electronic) that explains:

- How much paid sick leave the employee earned since the last notice.
- How much paid sick leave the employee used since the last notice.
- How much unused paid sick leave is available to the employee.

The employer may use regular payroll statements to notify the employee.

What can I ask my employee regarding their medical condition?

L&I allows an employer to require from the employee to provide verification from their physician for paid sick leave uses that exceed three consecutive days the employee is required to work.

How long do I have to accommodate this request?

The employer is required to permit the employee to use all earned leave time under WPSL. Additionally, if an employee uses paid sick leave for [any reason allowed by this law](#), the employer is prohibited from applying disciplinary action for the absence.

It's illegal for the employer to:

- Not pay the employee the current minimum wage.
- Not pay overtime owed to the employee.
- Retaliate or take any negative action against the employee for filing a complaint with L&I about paid sick leave, minimum wage or overtime – or for exercising any other right under the [Minimum Wage Act](#).

If you have a complaint or suspicion about your employer not providing you with paid sick leave or violating your other rights under the [Minimum Wage Act](#), you can report it to L&I. Complete the form below online or by mail, and include any relevant information or records. Mail or bring the form and records to the L&I office where the business is located.

Are there any exceptions to this rule?

According to L&I, there are only a few exceptions. They include employees who are doctors, lawyers, or dentists, as well as most executive managers who are paid on a salary (rather than an hourly) basis, if they supervise two or more full-time employees. More information can be found at: [Administrative Policy ES.A.1, Minimum Wage Act Applicability](#).

That said, while certain employee's may qualify as exempt, allowing reasonable time off under similar circumstances build trust and increases morale, resulting in higher performance and productivity.

What's important to document?

In addition to documentation requirements under "What type of notices are required?", it a good idea to keep a log of the following:

- Dates employee is absent

- Method for notification
- Nature of absence, if disclosed (sick, disability, personal, vacation)
- Doctors notes provided by employee
- Additional documentation from physician
- Amount of leave used

Where can I find more information about this subject?

More information and guidance on Washington Paid Sick Leave can be online and at the following sites:

<https://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/VacaySick/EmployerInfo.asp>

<https://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/VacaySick/EmployeeInfo.asp>

<https://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/VacaySick/FAQ.asp>

Idaho Sick Leave

What is it?

Idaho law does not require employers to provide employees with sick leave benefits, either paid or unpaid. An employer in Idaho may be required to provide an employee unpaid sick leave in accordance with the Family and Medical Leave Act or other federal laws.

Where can I find more information about this subject?

More information about Idaho employment law can be found online and at the following websites.

<https://labor.idaho.gov/pdf/wagehour.pdf>

<https://www.employmentlawhandbook.com/leave-laws/state-leave-laws/idaho/>

<https://www.idaho.gov/jobs/employee-rights-laws/>

Hawaii Sick Leave

What is it?

In Hawaii, paid vacation and sick leave is not required by law. Under Section 388-7(3), Hawaii Revised Statutes, of the Payment of Wages and Other Compensation Law, employers that provide vacation and sick leave benefits must make their policies available to employees in writing or through a notice posted in a place accessible to the employees. The employer's policy determines the criteria to earn and use these benefits.

Where can I find more information about this subject?

More information about Hawaii vacation and sick leave can be found online and at the following website.

<http://labor.hawaii.gov/wsd/vacation-and-sick-leave/>



Information Sources & Disclaimer

Information provided in this guide was compiled through the websites listed throughout the document and professional experience. Additionally, the information provided in this guide is to be used as such, a “guide”, and is not intended to be a fully comprehensive list or description of the law. It is not to be taken or interpreted as legal advice or legal counsel. Gorge HR works with several great employment attorney’s, however, and would be happy to connect you with a great resource, if legal counsel is needed or desired.

These are the minimum requirements set forth; however, an employer may always provide a benefit that is more generous than the law, as long as the same benefit is extended equally to all employees.

For in-house group or 1:1 training, please contact us at info@gorgehr.com or call 503-267-6825.