



Washington State Family Leave Act Q&A

March 2010

The Washington State Family Leave Act (FLA) builds on the existing similar benefits found in the federal Family and Medical Leave Act (FMLA) by providing additional benefits for women who are pregnant and to registered domestic partners. Women employees who take leave from work for pregnancy-related conditions or childbirth and who qualify for leave under the federal Family and Medical Leave Act are entitled to additional leave benefits under the Washington State Family Leave Act. Registered domestic partners who qualify for FMLA and FLA will be able to use their leave to care for a registered domestic partner who has a serious medical condition.

The following guidelines explain how the state FLA, federal FMLA, and the Washington State Human Rights Commission laws are coordinated in typical circumstances. For information on the federal FMLA, contact the U.S. Department of Labor's Wage and Hour Division at 1-866-487-9243 or online at www.dol.gov/dol/topic/benefits-leave/fmla.htm.

1. What is the purpose of the Washington State Family Leave Act?

The purpose of the Washington State Family Leave Act (FLA) is to allow employees leave from work for certain medical reasons, for birth or placement of a child, and for the care of certain family members (including registered domestic partners) who have a serious health condition. The law builds on the existing similar benefits currently available under the federal Family and Medical Leave Act (FMLA) in case the federal law changes. It also provides additional benefits to women who are pregnant and to registered domestic partners.

2. Which employers are required to provide FLA leave?

All employers who employ 50 or more employees for at least 20 workweeks annually within 75 miles of the employee's worksite must provide FLA leave to their employees. The workweeks can be in the current or preceding calendar year.

3. How long must an employee work for an employer to qualify for FLA leave?

An employee must work for the employer for at least 12 months, although those months need not be consecutive, before the employee is entitled to leave under the FLA. In addition, the employee must have worked for at least 1,250 hours during the last 12 months before the leave is to commence.

4. What leave benefits are covered by the FLA?

An employee is entitled to a total of twelve weeks of leave during any twelve-month period for one or more of the following:

- a. Leave for birth of a child of the employee and in order to care for the child.
- b. Leave for placement of a child with the employee for adoption or foster care.
- c. Leave to care for an employee's family member who has a serious health condition.
- d. Leave because the employee has a serious health condition that makes the employee unable to perform the functions of his or her position.

5. Must an employer provide paid leave under the FLA?

No. An employer does not have to provide paid leave under the FLA, but an employer may choose to pay for all or some of the FLA leave.

6. What is the relationship between leave under the state FLA and leave for pregnancy disability?

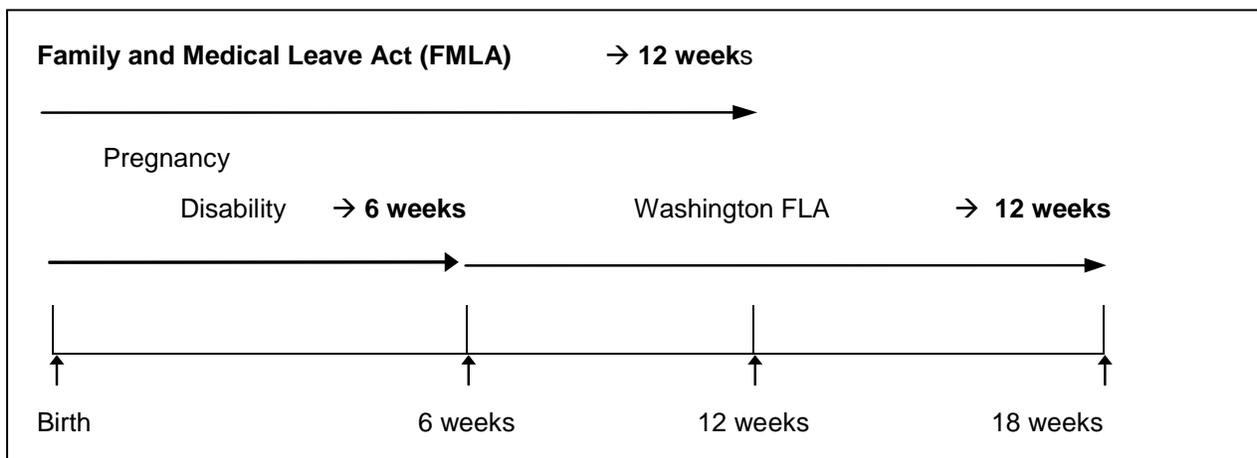
FLA must run after the pregnancy disability leave has ended. This means a woman who qualifies for FLA will likely have at least 18 weeks of total leave, which is more than that provided by the FMLA. For additional information, see <http://www.hum.wa.gov/employment/sexpregnancy-in-employment>.

7. How does the state FLA, the federal FMLA, and the leave benefits for pregnancy disability interact?

FLA and pregnancy disability leave may not run concurrently, but FMLA will run concurrent with both FLA and pregnancy disability leave. This means if an employee is eligible for FLA and pregnancy disability leave, the employee will be eligible for more leave under the two state laws together than the leave provided under FMLA. FLA is also available for qualified registered domestic partners whereas FMLA is not. Finally, if an employee takes FMLA for a qualifying exigency related to a military deployment or if they take FMLA as a military caregiver, then they will not be using the benefits provided under FLA. So they could qualify for all 12 weeks of leave under FLA.

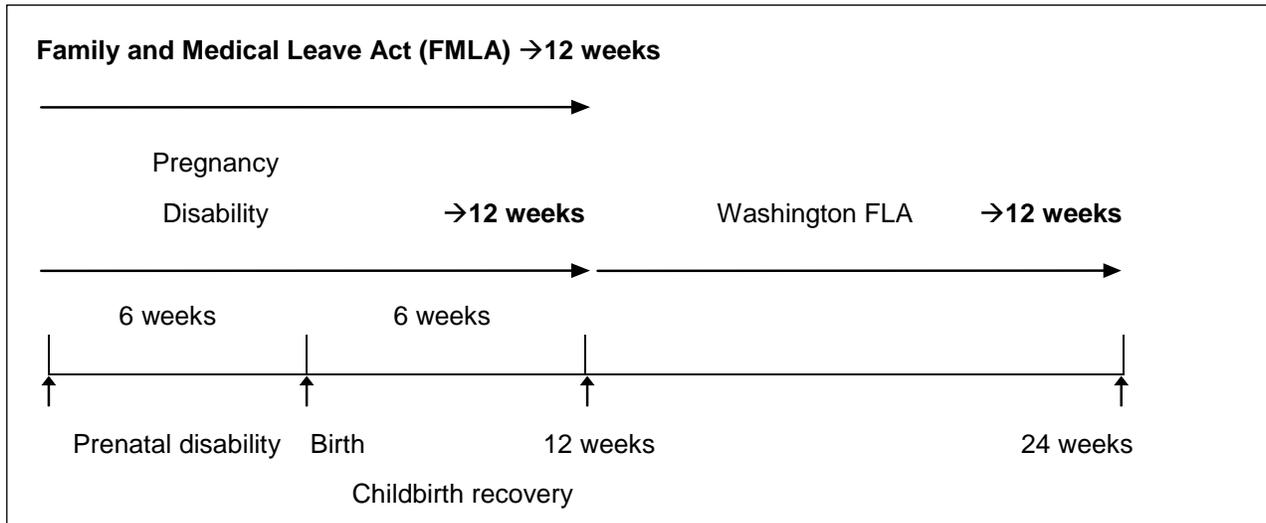
Example 1

Employee works until birth (no disability during pregnancy), has no serious complications during birth, and takes six weeks leave for recovery from childbirth. In such a case, the employee’s six weeks of pregnancy disability leave runs concurrently with the first six weeks of her federal FMLA leave; however, her state FLA leave does not begin to run until after her pregnancy disability leave ends. Once the employee’s pregnancy disability leave ends, her remaining six weeks of federal FMLA leave runs concurrently with the first six weeks of her state FLA leave. Once the employee’s federal FMLA leave is exhausted, she has six remaining weeks of state FLA leave (which results in a combined total of 18 weeks of leave).



Example 2

Employee takes six weeks of pregnancy disability leave before the child is born because of pregnancy-related complications, followed by six weeks for recovery from childbirth. These 12 weeks of leave count as leave both for pregnancy disability regulations and under the federal FMLA. Employee's 12 weeks of state FLA leave do not begin to run until after the 12-week period of pregnancy disability leave ends, providing employee with a total of 24 weeks of leave.



8. When can an employee use FLA leave for the birth or placement of a child?

An employee must take leave needed for the birth or placement of a child within 12 months of the child's birth or placement.

9. How much notice must an employee give to the employer before taking leave for the birth and placement of a child?

If birth or placement is foreseeable, an employee must give at least 30 days' notice to an employer to take leave for the birth or placement of a child. However, if the birth or placement requires leave to begin in less than 30 days, an employee must provide notice as soon as possible.

10. Does an employee have to use all 12 weeks of leave at once?

No. The FLA allows an employee to take intermittent leave – which is defined as leave in separate blocks of time – if the leave is for the same condition in a 12-month period. An employee can also take leave by working on a reduced work schedule. Similar to the federal FMLA, the FLA places certain conditions on intermittent and reduced-schedule leave, including:

- a. An employee may take intermittent or reduced-schedule leave after the birth or placement of a child only if the employer agrees; however, if the employee or child has a serious health condition, agreement of the employer is not required for intermittent or reduced-schedule leave.
- b. There is no limit on the size of a leave-increment an employee may take for an intermittent absence. However, an employer may determine the minimum size of the leave-increment that can be deducted from an employee's leave balance based on the shortest period of time that the employer's payroll system uses to account for absences as long as the payroll increment of time does not exceed one hour. For example, if an employee takes 4.5 hours of leave, an employer may count it as 5 hours of leave if the

payroll system accounts for absences on an hourly basis. An employer may not require an employee to take more leave than necessary to address the circumstance that precipitated the need for the leave.

- c. When an employee wishes to use intermittent or reduced-schedule leave for the employee's or a family member's planned medical treatment, the employer may require the employee to transfer temporarily to an available position for which the employee is qualified that has equivalent pay and that better accommodates recurring periods of leave.
- d. An employee may take intermittent or reduced-schedule leave without an employer's agreement when:
 - i. The leave is medically necessary for medical treatment of a serious health condition under supervision of a health care provider, for recovery from treatment or recovery from a serious health condition, or to provide care or psychological comfort to an immediate family member with a serious health condition.
 - ii. The employee or the employee's family member is incapacitated or unable to perform the essential functions of the job because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

11. How much notice must an employee give to the employer before taking leave for the employee's or a family member's serious health condition?

If leave is foreseeable because of planned medical treatment, an employee must give at least 30 days' notice to the employer. However, if the treatment is to begin in less than 30 days, an employee must provide notice as soon as possible.

12. How much FLA leave can be taken when both spouses work for the same employer?

If spouses entitled to leave under this chapter are employed by the same employer, the aggregate number of workweeks of FMLA or FLA leave to which both is entitled may be limited to 12 workweeks during any 12-month period, if such -leave is taken: (1) For the birth or placement of a child; or (2) for a parent's serious health condition.

The total amount of leave under both the federal FMLA and the state FLA is combined only for both husband and wife who work for the same employer if the leave is taken to care for a healthy newborn, a newly placed child, or to care for a seriously ill parent. If leave is taken for the care of a seriously ill child, spouse, or one's own health condition, each spouse-employee is entitled to a separate 12 weeks of leave.

For example, once a woman completes her pregnancy disability leave (some or all of which may have run concurrently with federal FMLA), a balance of 12 weeks of FLA leave remains to be shared by herself and her spouse to care for the healthy newborn or a sick parent over the same 12-month period. FLA and FMLA leave for this purpose may also run concurrently where the employee has not exhausted 12 weeks of FMLA entitlement.

If each parent uses six weeks of leave to care for a healthy newborn, the spouse-employees are still entitled to another six weeks for the care of a seriously ill child, spouse or own health condition.

13. Can an employer require medical certification from an employee?

An employer may require an employee to provide written medical certification of a serious health condition. If requested, the employee must provide, in a timely manner, a medical certification that includes:

- a. The date when the serious health condition started.
- b. How long it is expected to last.

- c. Relevant medical facts known by the healthcare provider.
- d. A statement that the employee is needed to care for a family member or a statement that an employee cannot perform the functions of his or her job.
- e. In addition, where an employee asks for intermittent leave or a reduced leave schedule, a statement that the proposed schedule is medically necessary; the dates, if known, on which treatment is expected to be given; and the expected duration of the intermittent leave or reduced leave schedule.

14. Can an employer require additional medical certification?

If the employer has reason to doubt the validity of the first medical certification, the employer may require, at the employer's own expense, that the employee get a second opinion from a healthcare provider chosen or approved by the employer, as long as that healthcare provider does not work for the employer. An employer may also request certification of a medical condition by a third healthcare provider on a "reasonable basis." The third medical opinion is considered final and binding.

15. What are an employee's return-to-work rights under the FLA?

- a. To be restored to the same or an equivalent job (same pay, benefits, and working conditions, within 20 miles of the employee's previous job) when returning to work.
- b. To maintain employment benefits accrued before the leave started.
- c. To be free from discrimination, retaliation, or firing because the employee attempted to exercise his or her rights under the FLA, filed a complaint or lawsuit under this law, or testified or gave information in any legal action or investigation brought against the employer under the FLA.

16. Does an employee have to do anything before returning to work?

The law does not require an employee to provide any particular information to an employer before returning to work, unless the employer requests certification from a healthcare provider that the employee is able to go back to work. In that case, the employee must provide the medical certification. The employer is also permitted to require an employee on leave to report periodically on the status and intention of the employee to return to work.

17. Does an employer have to provide employment benefits while an employee is on leave?

Generally, an employer is not required to provide employment benefits while an employee is on leave, but there are certain important exceptions. Benefits like vacation time, sick leave, and retirement benefits generally do not continue to accrue during an employee's leave. However, an employer cannot deny or eliminate employment benefits that had already accrued before the employee took FLA leave.

Under the state FLA, if an employer policy or collective bargaining agreement requires the continuation of medical or dental benefits during FLA-covered leave, then the employer must continue the contributions for such benefits. If there is no policy or union contract that requires such contribution, the employer must give the employee the option of maintaining medical and dental benefits during the 12-week leave period at the employee's own expense. An employee can continue benefits with the insurance company as specified under COBRA, or an employer can continue to collect the premium for an employee's health plan directly, but the amount paid by the employee cannot exceed 102% of the applicable premium for the leave period. (An extra 2% can be added to cover administrative costs.)

For more information on insurance coverage, contact the Office of the Insurance Commissioner at www.insurance.wa.gov or call 1-800-562-6900.

18. Does the FLA have any effect on existing employer-provided benefits?

The employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, including any spouse and dependent coverage, according to state or federal law. The premium paid by the employee may not exceed 102% of the applicable premium for the leave period.

This law does not diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family leave benefits to employees than the rights under the FLA. The rights established for employees under this law may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

19. Can an employer provide more generous leave policies?

Yes, an employer can provide leave policies that provide benefits that are more generous than the requirements under the FLA; however, an employer is not required to do so.

20. Must employers notify employees of this law?

Yes, by posting the information in a conspicuous place where employees would expect to find such notices. This information is incorporated on the required *Your Rights as a Worker* poster which is available at no cost on the Labor & Industries Web site, www.Lni.wa.gov. An employer who violates the posting requirement may be subject to a civil penalty of not more than \$100 for each separate offense.

21. What portions of the FLA will L&I enforce at this time?

FLA and FMLA run concurrently, except for these specific circumstances where L&I will enforce:

- a. When an employee takes pregnancy disability, she may be allowed additional leave under the state FLA that goes beyond the limits of the federal FMLA. That is because the 12 weeks of FLA for newborn care begins AFTER the pregnancy disability leave ends. L&I will enforce the leave *beyond* FMLA.
- b. Registered domestic partners who qualify for FMLA/FLA cannot use their leave under the federal law to care for their partners, but they can under the state FLA. L&I will enforce these cases.
- c. If a person uses FMLA for an exigent reason related to a military deployment, he or she will still have all 12 weeks of FLA available for serious illnesses or newborn care. L&I will enforce any FLA leave that extends beyond the limits of FMLA.

22. How does L&I handle complaints against employers?

Employees may file a complaint against an employer for alleged violations of the FLA when they believe their rights to leave benefits have been denied. Upon receipt of a bona fide complaint, L&I is obligated to investigate the complaint. If, after investigation, L&I finds that an employer may have violated the FLA, L&I will issue a citation. An employer can appeal the citation and request a hearing before an administrative law judge (ALJ). An employer who disagrees with the ALJ can ask the L&I Director to reverse the decision. If the Director does not agree, an employer can file an appeal in superior court. The party who wins on appeal can seek reimbursement of attorneys' fees and costs.

23. What are the penalties for an employer who violates the FLA?

An employer found to have violated a requirement of the FLA is subject to a civil penalty of not less than \$1,000 for each violation. Regardless of whether an employer has been found by L&I to have violated this law, an employer can be sued by a complaining employee in a separate civil action for damages.

24. Can an employer be liable in a civil action brought by an employee for FLA violations?

Employees who believe their employer has violated the FLA have a right to bring a lawsuit in court. If an employer is found liable for violating the FLA, the employer may potentially be liable for the following:

- a. Damages for wages, salary, employment benefits, or other compensation denied or lost because of the violation; or
- b. Other actual monetary losses because of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee.
- c. Interest on the damages or monetary losses described above, calculated at the prevailing rate.
- d. An additional amount as liquidated damages equal to the sum of the amounts described above.
- e. Other types of equitable relief from the court, depending upon whether such relief is appropriate based on the facts, such as ordering employment, reinstatement, or promotion.
- f. Attorneys' fees and costs.

25. Can an employer avoid liability for liquidated or double damages?

If an employer who has violated the FLA proves to the court that the act or omission was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, the court may, in its discretion, reduce the amount of the liability to the amount of actual damages plus interest.