



# Washington Paid Family and Medical Leave

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**Littler**<sup>®</sup>

# Presented by



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# Agenda



- Overview of the Washington Paid Family and Medical Leave (WA PFML) Law
- Employer Requirements
  - 2019
  - 2020 and on-going
- Employer-Provided Leave
  - Designation as Supplemental benefit
- Interplay with FMLA and Other Statutory Leaves



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## Washington Paid Family and Medical Leave Law Overview

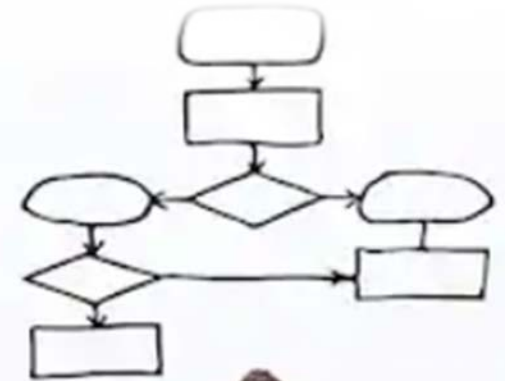
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# Overview

- WA PFML
  - Replaces Washington Family Leave Act (mini-FMLA) as of January 1, 2020
  - Components:
    - Partial wage-replacement benefits paid by the State
    - Leave entitlement
    - Job reinstatement rights
- Other Laws Still in Play:
  - FMLA
  - Paid Sick Leave
  - Washington Family Care Act (Kin Care)
  - Washington Pregnancy Disability Leave
  - And others (mini-ADA, domestic violence, workers' comp, etc.)

# PFMLA: What Is It

- Wage replacement benefit run by state
  - Employers pay premiums (employee- and employer-paid)
  - Option for employer-run plan
- Covers all employers
  - but small employers (under 50) don't owe employer premiums
- Covers employee's illness serious health condition, family member's serious health condition, baby bonding, and certain military leave





# What does WA PFML provide?

## Between 12 and 18 weeks of leave

- **Medical Leave:**
  - Up to 12 weeks of leave for the employee's own serious health condition
  - An additional 2 weeks of leave for pregnancy-related incapacity
- **Family Leave:**
  - Up to 12 weeks to care for a family member with a serious health condition
  - Up to 12 weeks of leave for bonding with a newborn or placement of child under 18
  - Up to 12 weeks for a qualifying military exigency
- ***There is a combined maximum of 16 weeks available for all leave reasons per claim year (18 weeks for employees with pregnancy-related incapacity)***

## Wage Replacement

- \$100 - \$1,000 per week (depending upon income) for 2020



# Employee Notice to Employer

- Timing
  - Foreseeable (expected birth, placement, planned medical treatment): 30 days
  - Unforeseeable (lack of knowledge, a change in circumstances, or a medical emergency): if less than 30 days, as soon as practicable (possible and practical)
  - Military exigency: as soon as practicable (regardless of foreseeability)
  - Date or schedule changes: as soon as practicable
- Form of notice
  - in writing
    - May be text message or email
  - include anticipated timing and duration



# Intermittent Leave

- Intermittent leave:
  - Minimum claim duration is 8 hours in a week
    - Example from ESD: An employee typically works six-hour shifts each weekday. The employee takes leave Monday, works Tuesday and Wednesday, and takes leave Thursday and Friday. The minimum claim duration requirement would be satisfied with the leave taken Thursday and Friday. That employee could also include the hours missed on Monday in the weekly claim.
  - Statute does not address “intermittent” leave or increments of use
  - Interpreting rules regarding notice requirements indicate leave may be continuous or taken intermittently or on a reduced schedule basis
  - Statute and rules do not prohibit intermittent use for baby bonding



# Claim Process

- Employee applies with ESD
- ESD provides Employer with notice of filing of application
  - Employer has five working days, plus reasonable mailing time, to provide information that might make the applicant ineligible
    - Lack of notice?
    - Supplemental benefits?
- ESD may send Employer notice of questions re qualification or eligibility
  - Employer has ten calendar days, plus reasonable mailing time, to respond
- Employer will have rights to appeal or file petition for review

# 2019 Requirements

- Take Deductions\*
- Pay premiums (quarterly)
- Quarterly reporting
- Post notice (by January 1, 2020)



\*If just starting deductions, no “make-up” and must provide notice

# On-Going Employer Obligations: Poster/Notice

- Poster: Conspicuous place/on the premises/customarily posted
  - If use Employer-created poster must be approved by State
- Notice of Rights:
  - Trigger: Seventh consecutive absence due to family or medical leave purpose, or aware of reason, whichever is later.
  - Action: Within five business days, provide Notice of Rights
- Policy not required, but recommended
  - Address required notice
  - Address interaction with employer benefits

# On-Going Employer Obligations: Reinstatement/Job-Protection

- Reinstatement Requirements (employers with 50+ employees)
  - To be eligible, employee must have been employed for 12+ months and worked at least 1,250 hours during preceding 12 months
  - Reinstatement to same or equivalent position
  - Under certain circumstances, reinstatement may be denied to employee who is among the highest paid 10% of its workforce within 75 miles of the facility at which the employee works
  - BUT other basis for job-protection (retaliation, interference, other laws)

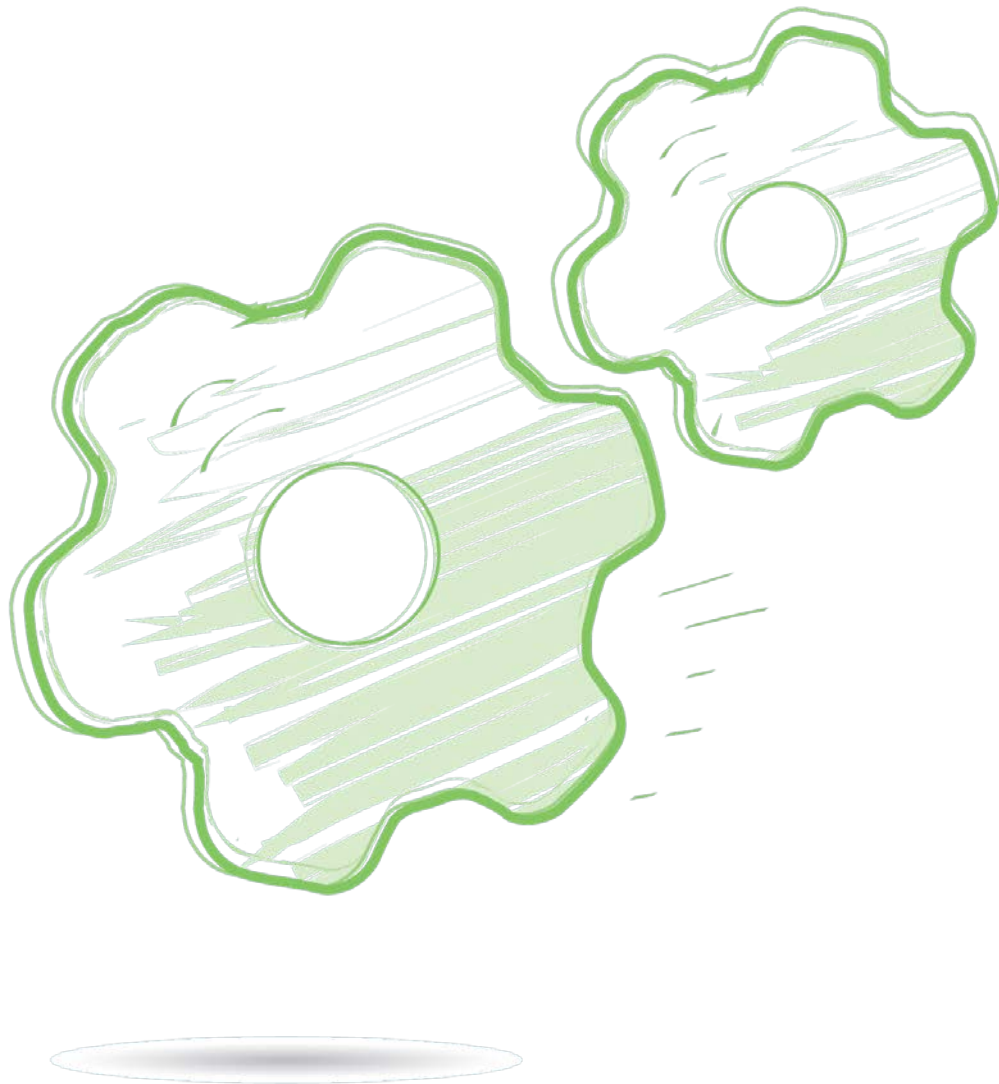
# On-Going Employer Obligations

- Reporting and Withholding Settlements
  - Report to ESD “back pay awards” and “settlements” within 30 days of the award or settlement
  - Reduce the award or settlement by an amount determined by ESD, pay that amount to the PFML fund, and pay the department any premiums due for PFML insurance purposes on the entire amount of the award or settlement

# Interaction with Employer-Provided Leave: Supplemental Benefits

- Leave banks to consider:
  - Vacation, sick, PTO, STD, parental leave, personal days, floating holidays, etc.
- Four step process:
  - Supplemental or not?
  - Adjust reporting of wages to ESD for WA PFMLA purposes in light of designation:
    - Supplement benefits: do not report
  - Limit eligibility to employer-provided leave or not?
  - Top-up or not?
    - If bank “tops-up,” decide how to do so





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## Interplay between FMLA / WA PFML and Leaves

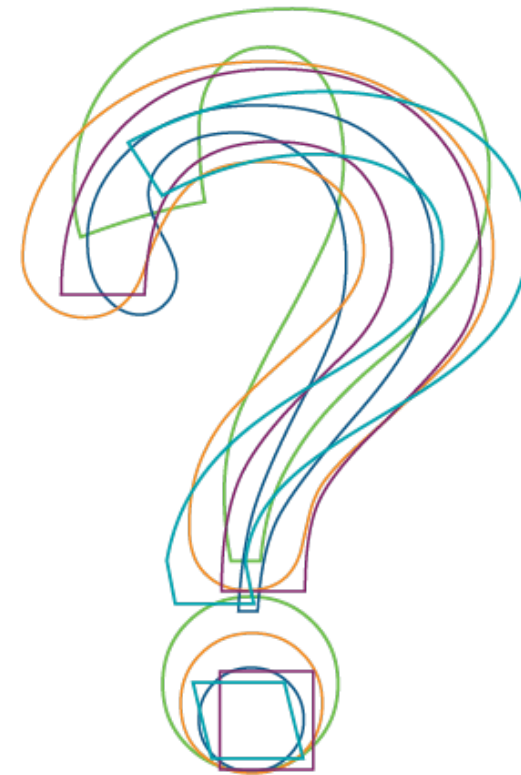
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FMLA

# How Does WA PFML Interact with FMLA

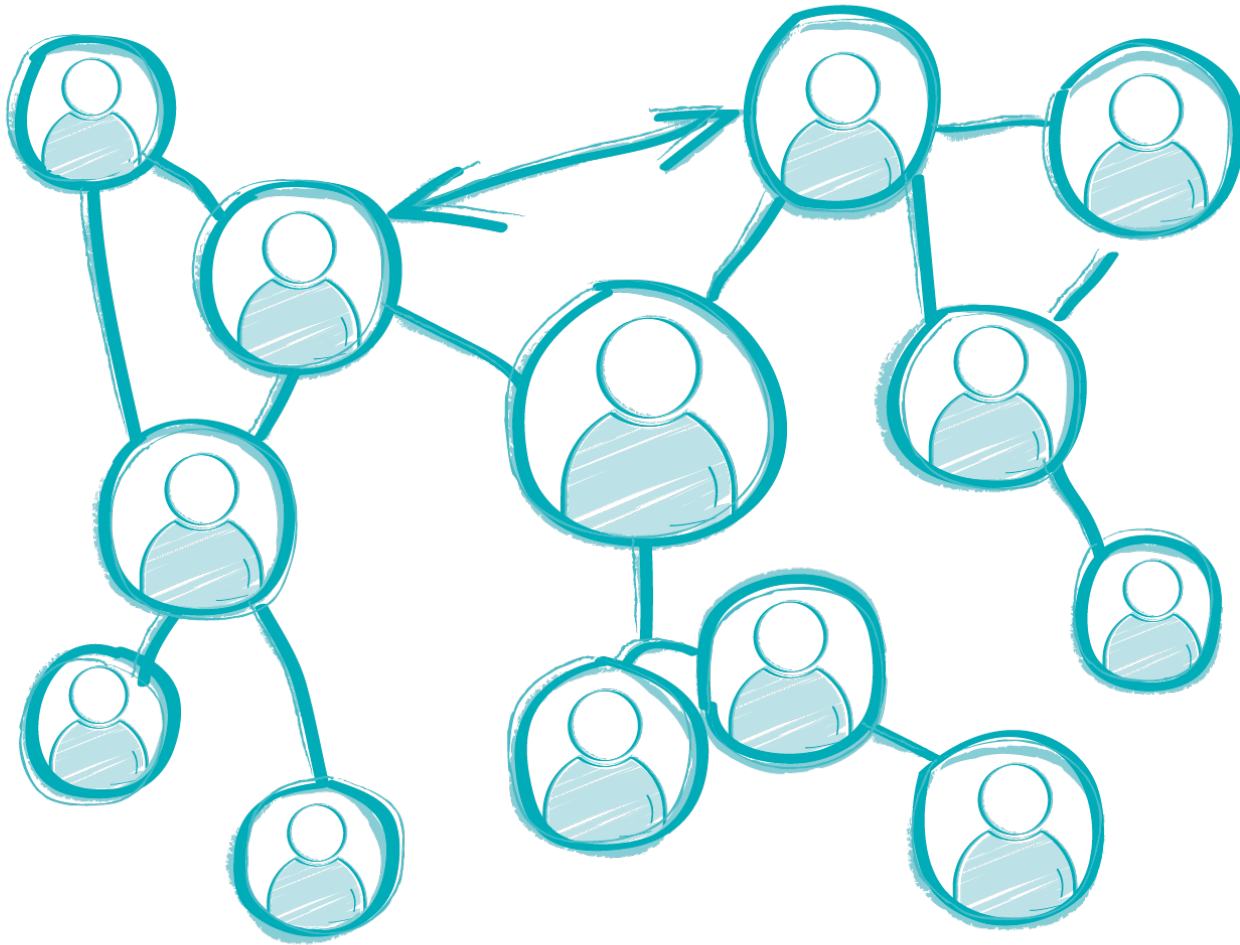
- Public agencies, including states and political subdivisions (cities), are covered by FMLA regardless of number of employees
- How does WA PFML interact with FMLA?
  - Where EE is eligible under both WA PFML and FMLA and the leave reason is covered under both laws, the leaves “shall” run concurrently
    - According to ESD, WA PFMLA may be taken after FMLA is exhausted (if condition still applies and otherwise eligible)
  - If the leave is eligible under one law but not the other, the leave will run only under the applicable law, and leave under the other may be “stacked”



| Element            | WA PFML  | FMLA  |
|--------------------|--|---|
| Family Member      | Child, <b><i>grandchild, grandparent</i></b> , parent, <b><i>sibling</i></b> , or spouse ( <b><i>including state registered domestic partner</i></b> ) of an employee  | Parent, spouse, and child (under age 18 or 18+ and incapable of self care). The FMLA also includes the concept of in loco parentis.   |
| Leave Durations    | 12 weeks medical leave (+2 weeks for pregnancy), 12 weeks family leave, combined total of 16 weeks between the two (+2 weeks for pregnancy)  | Up to 12 weeks for all reasons except care of an injured service member which provides up to 26 weeks per injured service member. Combined maximum of 26 weeks per year.  |
| Leave year method  | A period of fifty-two consecutive calendar weeks beginning from Sunday of week of birth/placement/application  | Four methods from which ER can choose the fixed date; measured forward; rolling backward; or calendar year leave year method  |
| Intermittent leave | 8 hour minimum increment   | Smallest increment of time tracked for other leaves and must be no greater than one hour  |
| Eligibility        | Benefits: Employment “localized” in Washington and has worked 820 hours in “qualifying period” for any employer<br>Job Protection: EE must have worked for ER for at least 12 months, worked 1,250 hours in year preceding leave, and work for ER with 50+ Washington employees. | EE must have worked for ER for at least 12 months, worked 1,250 hours in year preceding leave, and work at a location with 50 or more EEs within 75 miles (except that public agencies are covered regardless of number of employees) |

# Examples When WA PFML and FMLA Will Not Run Concurrently

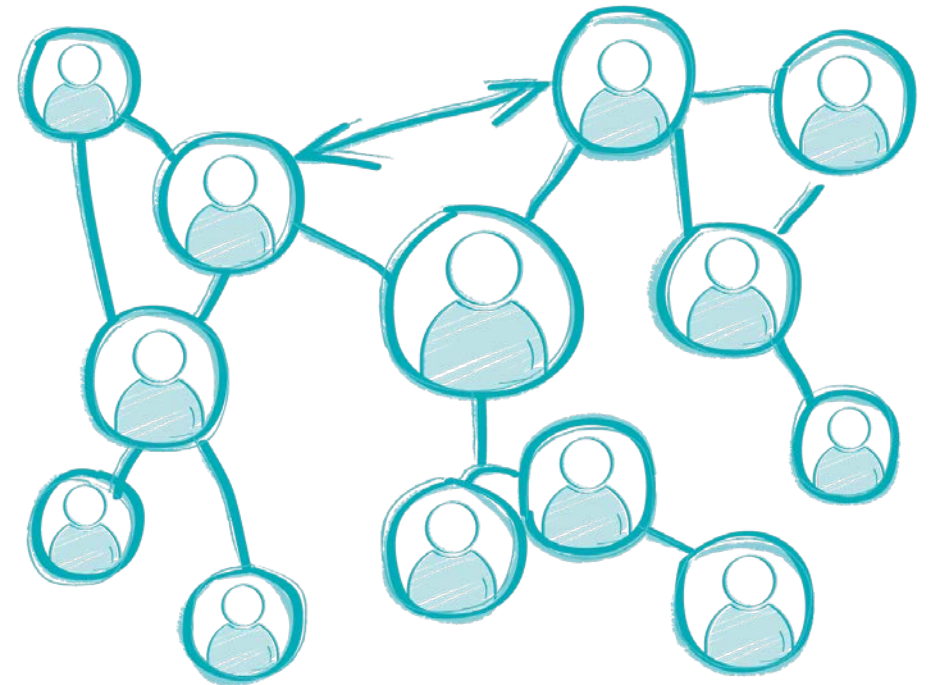
| Example  | FMLA or WA PFML?                                  |
|--|---|
| Employee is not yet eligible for FMLA  | WA PFML only if EE is eligible and use is covered |
| Employee's worksite has <50 employees within 75 miles  | WA PFML only if EE is eligible and use is covered |
| Employee is caring for grandchild, grandparent, domestic partner, or sibling with serious health condition   | WA PFML only if EE is eligible and use is covered |
| Employee is caring for covered service member who is "next of kin" but not a child, grandchild, grandparent, parent, sibling, or spouse of an employee | FMLA only if EE is eligible and use is covered    |
| Employee has exhausted FMLA but not WA PFML  | WA PFML only if EE is eligible and use is covered |



# Kin Care

# Washington Family Care Act (aka Kin Care)

- Requires use of existing sick leave, vacation, and/or PTO for illness of family member and other reasons
- No requirement to provide ADDITIONAL leave
- BUT creates a job-protection around leave use
- Washington State since 1988





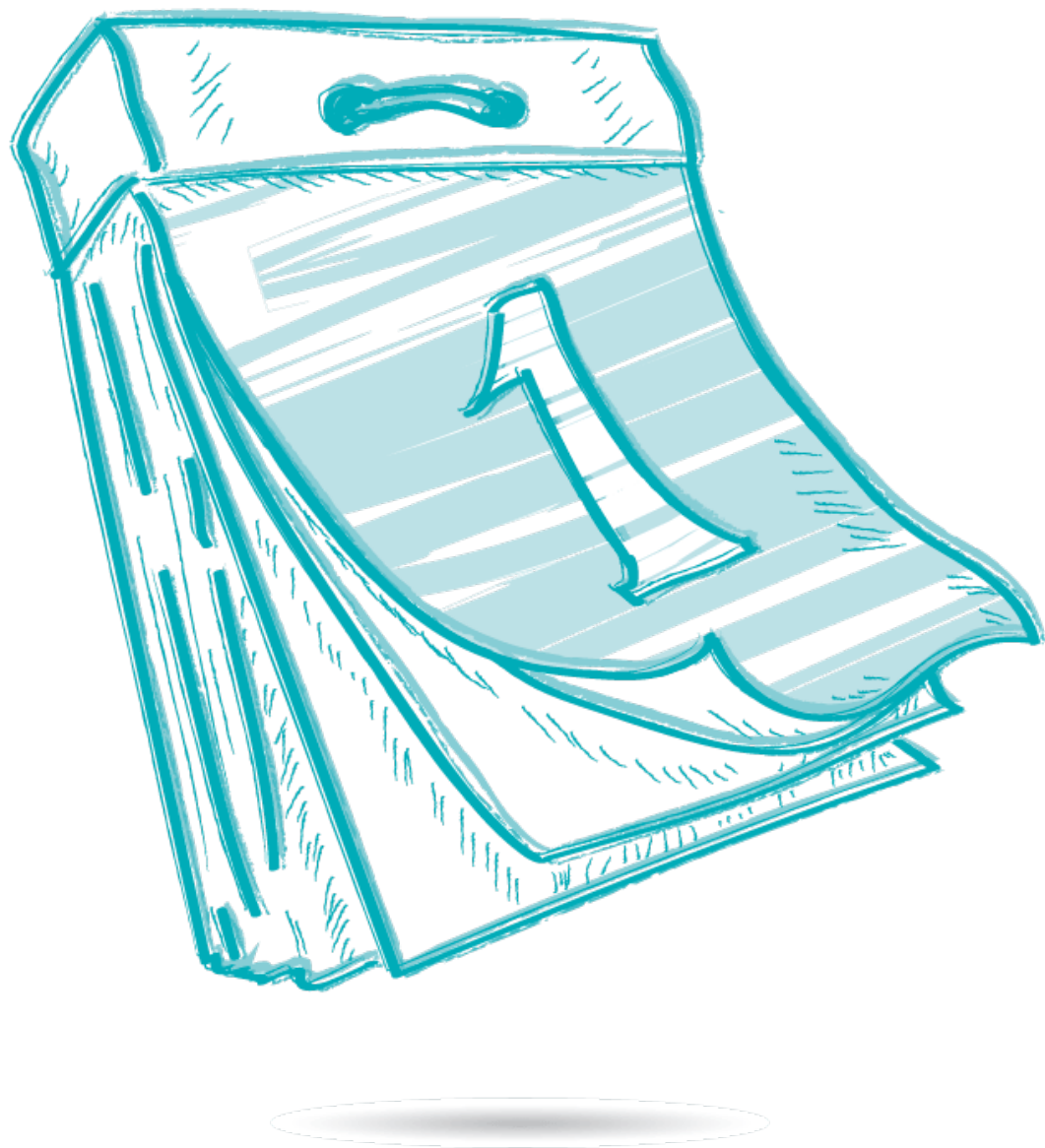


## Paid Sick & Safe Leave

# Paid Sick Leave & Safe Leave

- Requires provision of paid sick or safe time (accrued or granted)
- Can use PTO or vacation in ALMOST all jurisdictions (but see Santa Monica, CA)
- Applies to ALMOST all employees (with some variations)
- Job-protected leave
- Washington State, Seattle, Tacoma, and SeaTac (transportation and hospitality)





## Other Leaves

# Other Leave Sources

- ADA (leave as an accommodation)
- Pregnancy disability
- Domestic violence



# WA PFML and Pregnancy Disability Leave

- WA PFML and FMLA are in addition to leave for sickness or temporary disability because of pregnancy or childbirth
- Employees disabled by pregnancy may use up to 18 weeks combined WA PFML for medical and family leave



# Steps to Compliance

- Update leave policy (recommended)
  - PFMLA replaced Washington Family Leave Act
  - Address interactions with FMLA, STD/LTD, Paid Sick Leave, PTO, floating holidays, etc.
  - Require employee notice
  - ADA, pregnancy disability, WFCA remain
- Update leave process
  - Notice within five days of seven consecutive absences or when employer has notice it is for PFMLA purpose, whichever is later
  - Separately track PFMLA (concurrent with FMLA or not?)
  - Respond to Notice of Application within five business days if basis for ineligibility (*e.g.*, lack of notice)



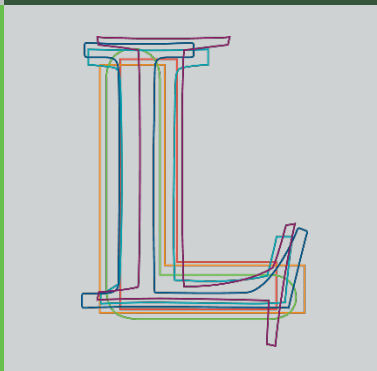
# Steps to Compliance

Understand **other** required notices:

- Put up Poster
- Notice to all employees if employer stops paying employee premium
- Notice to ESD if employer provides settlement or back wages payment
  - Self-insured in worker's comp or unemployment?
  - Reduce back pay award or settlement by amount determined by department
- Notice of determination to deny restoration
  - As soon as the employer decides to deny
  - In person or by certified mail







# Questions?

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