Paid family and medical leave law arrives in Washington state

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On Jan. 1, 2019, Washington will become the fifth U.S. state to begin enforcing Paid Family and Medical Leave regulations. This new program will allow employees to receive a portion of their wages when they are on protected leaves of absence and will function similar to unemployment insurance programs. Importantly, the law neither creates a new source of leave for employees nor requires employers to administer the program.

Working in Washington

Remember, Oregon employers that have employees working in Washington may find them covered by this law under its "localization" test. Determining whether an employee is localized in Washington requires an employer to determine whether the employee will work 820 hours or more in Washington over the course of a year. Further, an employer that temporarily assigns an employee to work at a Washington location may be required to submit a waiver to the state Employment Security Department if that employee is expected to work fewer than 820 hours over the course of a year in Washington and is not a Washington resident. Because the department does not expect to complete rulemaking for this law until late 2019, employers should watch for further developments regarding the question of localization.

Reporting obligations and collecting premiums

The law requires employers with Washington employees to start collecting premiums and reporting hours on Jan. 1, 2019. The program will be funded by premiums collected on 0.4 percent of gross wages. Those premiums are shared between employers (responsible for 37 percent of the total premium) and employees (responsible for the remaining 63 percent). Employers are also required to withhold the employee portion from the employees' paychecks and remit the total premiums to the department. Employers with fewer than 50 employees in Washington are not required to pay the employer portion of the premiums, but will still be required to collect, record and remit the employees' premiums to the state. Employers are also required to report Washington employee hours and wages to the department.

Employee benefit eligibility

While employees and employers begin paying premiums in the new year, employees must wait until Jan. 1, 2020 to file benefit claims. Employees must work at least 820 hours in the first four of the last five completed calendar quarters from the leave date to be eligible to file a claim for benefits. Employers are required to report the number of hours employees are working because the 820-hour threshold is a portable benefit (meaning that an employee's hours worked can transfer from employer to employer). The first quarterly employer reports are due to the department in April 2019; the department is still developing the online reporting tool for employers to submit the data.

Benefits can be used to cover an employee's qualifying events, including the employee's own medical condition, care for family members, for the birth or placement of a child, and certain military-related events. Importantly, Washington Paid Sick Leave cannot be used at the same time as Washington Paid Family and Medical Leave. Paid Family and Medical Leave may also run concurrently with the federal Family and Medical Leave Act (FMLA) and other state leave laws.

Voluntary plans

Employers that already offer employees paid family and medical leave benefits may want to pursue the voluntary plan option under the law. Voluntary plans are available for employers that want to operate their own paid family and medical leave programs, or those that believe their current plan, such as a short-term disability plan, already meets or exceeds the eligibility and benefit requirements of the law. Employers that pursue the voluntary plan option must apply to the department and be approved in order to operate a voluntary plan and avoid withholding and remitting both the employer and employee premiums starting in 2019. Under the voluntary plan option, employers are still required to report employee wages and hours each quarter.

Oregon's version coming soon!

Employers should also take note that the Oregon Legislature is in the process of developing its own proposals for paid family and medical leave. Expect to see soon a similar law for Oregon employers.

Nicole Elgin is an associate with Barran Liebman LLP. She can answer questions about Washington's new Paid Family & Medical Leave law. Contact her at 503-276-2109 or nelgin@barran.com.