



Reasonable Accommodation

SMALL AGENCY LIAISON MEETING

DECEMBER 2018

HALEY THOMPSON, DES EMPLOYEE AND LABOR RELATIONS MANAGER

What is a Reasonable Accommodation?

- ▶ A “reasonable accommodation” is any modification or adjustment to a job, the job application process, or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process, perform the essential functions of the job, or enjoy the benefits and privileges of employment. Examples of “reasonable accommodations” include: making existing facilities readily accessible to and usable by employees with disabilities; restructuring a job; modifying work schedules; acquiring or modifying equipment; and reassigning a current employee to a vacant position for which the individual is qualified.
- ▶ https://www.ada.gov/hiv/ada_q&a_aids.htm

What governs the RA process?

- ▶ Americans with Disabilities Act

<https://www.eeoc.gov/eeoc/history/ada25th/index.cfm>

- ▶ Washington Law Against Discrimination

<https://www.hum.wa.gov/Employment/>

- ▶ Agency Policy

<http://apps.leg.wa.gov/WAC/default.aspx?cite=357-26-020>

Categories of RA :

1. Modifications or adjustments to a job application process that enable a qualified individual to be considered for the position
2. **Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of the position**
3. Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment that are enjoyed by its other similarly situated employees without disabilities

How do I know that an employee needs RA?

- ▶ The employee or their representative must let the employer know that they need an adjustment or change at work for a reason related to a medical condition. They do not need to use the phrase “reasonable accommodation.”
- ▶ Examples of RA requests include:
 - ▶ “I am having trouble getting to work on time because of my medical treatments.”
 - ▶ “I need time off for a back surgery.”
 - ▶ “My wheelchair doesn’t fit under my desk.”
- ▶ NOT an RA request: My chair is uncomfortable (unless it is followed by “because of my sciatica” or other medical reason)

My employee asked for an accommodation. Now what?

- ▶ Engage in an informal process to clarify their needs. Ask clarifying questions regarding their request, not their medical condition.
- ▶ Use templates we have available to get specifics from the employee and confirmation from a medical provider, if necessary. This not necessary and should not be requested if the disability is obvious (e.g. employee in a wheelchair).
- ▶ The information the employer can request is limited to what is relevant to the request; establishing that the employee has a disability and that disability necessitates an R.A. Again, the templates are helpful for this reason!

What are some examples of accommodations?

- ▶ Job Restructuring: changing marginal job functions that they are unable to perform because of disability or altering when or how a function, essential or marginal, is performed
- ▶ Leave: Allowing the employee to use paid or unpaid leave to obtain treatment, recuperate, attend appointments, etc. May be concurrent with FMLA.
- ▶ Modified or part-time schedule: Adjusting arrival or departure times, allowing additional or longer breaks, allowing a reduction in work hours. You are not obligated to make a full-time position part time. An analysis should be done based on the need for the position.
- ▶ Reassignment: If the employee cannot perform the essential functions of their job, a reassignment to a vacant position can be considered. Promotions are not given through R.A.
- ▶ How long does the accommodation stay in place? As long as the disability exists.

Undue Hardship

- ▶ An employer is not obligated to provide an accommodation if it presents an undue hardship. The case for undue hardship must be made through thorough analysis specific to the position. The threshold for undue hardship is high for state employers, because the state as a whole is considered the employer, so resources are tremendous.
- ▶ Examples of undue hardship: The employee wants to work at night but they are in a customer facing position and need to provide assistance to customers during the day. This is an undue hardship because of the significant disruption to business.
- ▶ Be cautious and don't make assumptions. Work with your HR Consultant and/or AAG before rejecting an RA proposal

Disability Separation

- ▶ What is a disability separation?

A disability separation is an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee's position or class with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action. (WAC 357-46-160)

- ▶ How do I know if the employee should be disability separated?

If you have exhausted the RA process and there is not a way to continue employment for the individual, consult with HR and/or your assigned AG before moving to disability separate

- ▶ Note: Disability Separation does not provide or guarantee the employee any benefits. They need to apply for those separately.

Pregnancy Disability

- ▶ The Pregnancy Accommodations Law passed in 2017 requires an employer to provide a pregnant employee with the following accommodations **without requiring any medical certification**:
- ▶ Providing frequent, longer, or flexible restroom breaks;
- ▶ Modifying a no food or drink policy;
- ▶ Providing seating or allowing the employee to sit more frequently; and
- ▶ Limiting lifting to 17 pounds or less.

If an employee is asking to be transferred to a different position or for a change in their work schedule, job assignment, additional equipment, etc. the employer can then request medical certification through the reasonable accommodation process.

Things to remember:

- ▶ You're not alone- work with your HR Consultant and/or AAG
- ▶ Engage in the process
- ▶ Treat each request individually
- ▶ Be fair
- ▶ Document your responses to the request and the accommodation given
- ▶ Don't disclose the RA to other staff. Emphasize your policy of assisting employees. The employee can disclose if they choose.

Resources:

- ▶ EEOC

<https://www.eeoc.gov/policy/docs/accommodation.html>

- ▶ WA Human Rights Commission

https://www.hum.wa.gov/media/dynamic/files/159_disbselfassess%20updated.pdf

- ▶ Job Accommodation Network (JAN)

<https://askjan.org/>

- ▶ And don't forget your friendly local HR Consultant!

Shared Leave pools

An employee may donate to any of the below shared leave pools if the donation meets the following criteria:

- The donation will not cause the employee's annual leave balance to fall below 80 hours after the transfer.
- The employee's request to donate will not cause their sick leave balance to fall below 176 hours after the transfer.
- An employee may donate all or part of their personal holiday.

Donations of leave received from any of the Shared Leave pools listed below does not count toward the 522 days total an employee may receive in shared leave benefits, as specified in RCW 41.04.665

Uniformed Service Shared Leave Pool (USSLP) – established January 1, 2012

<https://www.mil.wa.gov/uniformed-service-shared-leave-pool>

An employee is eligible to receive shared leave from the USSLP if there is leave available in the pool and the employee meets the following criteria:

- The employee is called to service (voluntarily or involuntarily) in the armed services;
- The employee has depleted or will shortly deplete their paid military leave, compensatory time, vacation leave, and personal holiday;
- The employee has abided by their Employer's rules regarding Military Leave; and
- The employee's monthly military salary [as defined in WAC 357-31-650(4)] is less than their state monthly salary [as defined in WAC 357-31-650(5)]. However, up to **eight hours per month** may be used from the pool, to continue coverage under the Public Employee's Benefit Board regardless of the employee's monthly state salary and military salary.

Forms:

- [Recipient Request Form](#)
- [Donor Form](#)

Contact:

MilitarySharedLeaveProgram@mil.wa.gov

Phone: (253) 512-7522

Fax: (253) 512-7808

Veteran's In-state Service Shared Leave Pool (VISSLP) – established July 23, 2017

<http://www.dva.wa.gov/benefits/veterans-state-service-shared-leave-program>

An employee is eligible to receive shared leave from the VISSLP if:

- The employee is a current member of the uniformed services or is a veteran as defined under RCW [41.04.005](#), and is attending medical appointments or treatments for a service connected injury or disability; or
- The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability

Forms:

Recipient Form

http://www.dva.wa.gov/sites/default/files/VISSLP%20Recipient%2002.20.2018%20660-02_0.pdf

Donor Form

http://www.dva.wa.gov/sites/default/files/VISSLP%20Donor%2003.2018%20660-01_0.pdf

Contact:

VISSLP@dva.wa.gov

(360) 725-2247

Foster Parent Shared Leave Pool (FPSLP) – established October 19, 2017

<https://www.dcyf.wa.gov/services/foster-parenting/fpslp>

Eligibility to Receive Leave from Pool:

- An employee is eligible to receive shared leave from the Foster Parent Shared Leave Pool if the employee is currently licensed as a foster parent and is caring for or preparing to care for a foster child.
- To receive shared leave from the pool to care for a foster child, the employee must exhaust all compensatory time, recognition leave, and their personal holiday. The employee is not required to deplete all of their vacation leave and sick leave and can maintain up to 40 hours of vacation leave and 40 hours of sick leave in reserve.
- To receive shared leave from the pool to prepare for a foster child, the employee must exhaust all compensatory time, recognition leave, and their personal holiday. The employee is not required to deplete all of their vacation leave and can maintain up to 40 hours of vacation leave and 40 hours of sick leave in reserve. An eligible employee may receive up to five days of shared leave, per occurrence, from the Foster Parent Shared Leave Pool to prepare to accept a foster child in their home.

Forms:

- [REQUEST leave from the pool](#)
- [DONATE leave to the pool](#)

Contact:

dcyf.fpslp@dcyf.wa.gov

Washington **Paid Family & Medical Leave**



Employment Security Department
WASHINGTON STATE



The Path to Paid Family & Medical Leave

2007

First Paid Family and Medical Leave bill passes the Legislature but does 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

Rapid program implementation; voluntary plan applications become available in late summer.

2019

Eligible employees and employers begin paying premiums on January 1.

2020

Employees can begin filing for benefits on January 1.

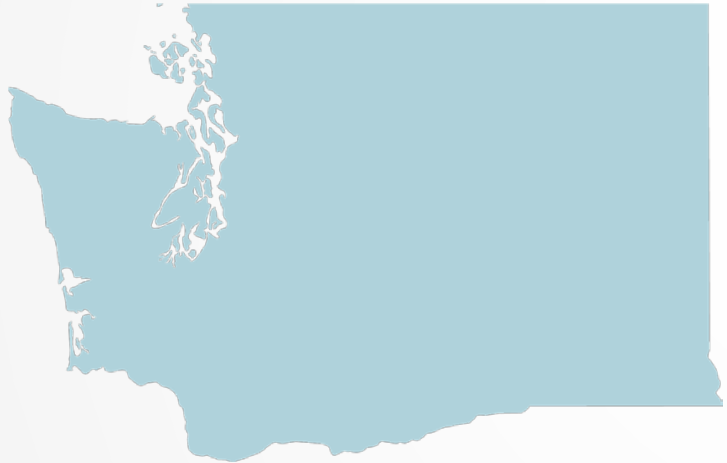
Why Paid Family and Medical Leave



- ✓ An essential benefit that gives every Washingtonian support when they need it most.
- ✓ Strengthens companies of every size by making it possible to give every employee a way to be there for care.
- ✓ Share the costs associated with leave among employers and workers.



Who Does This Apply To?



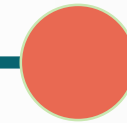
Workers & their
employers in
Washington

Rollout Timeline



2019

Premium Collection
Reporting Hours & Wages



2020

Benefits Available

Paid Family and Medical Leave

Family Leave



Caring for family members



Birth or placement of a child



Certain military-related events

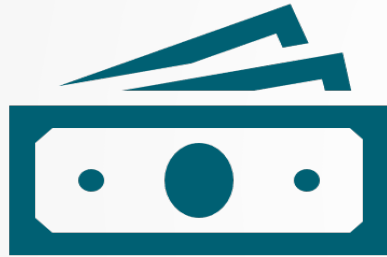
Medical Leave



Your own medical condition

Be there for care.

Benefits









Weekly wage replacement
Proportion of weekly wages
from \$100 to \$1,000












Typical leave of up to 12 weeks,
18 weeks in exceptional
circumstances.

Eligible for Care in Family Leave?

Eligible

-  Child (step)
-  Grandchild
-  Spouse/Domestic Partner
-  Sibling (step)
-  Parent (step, in-law)
 - Loco Parentis
 - Legal Guardian
 - De Facto Parent
-  Grandparent (in-law)

Not Eligible

-  Godparents
-  Aunts or Uncles
-  Cousins
-  Distant relatives
-  Roommates
-  Neighbors
-  Coworkers
-  Live-in non-family members
-  Pets

This is not an exhaustive list, and you should consult ESD for specific or special circumstances.

BEGIN

Qualification

- Worked 820 hours



Leave Lifecycle

Receive Benefits

- Claim approved & benefit extended
- Up to 12 weeks as needed with partial wage replacement
- Up to 18 weeks in exceptional circumstances
- Max weekly benefit of \$1,000

**START
Planned Leave**



File Claim

Eligibility

- Experiences a covered reason for leave



**START
Unplanned Leave**

Eligibility



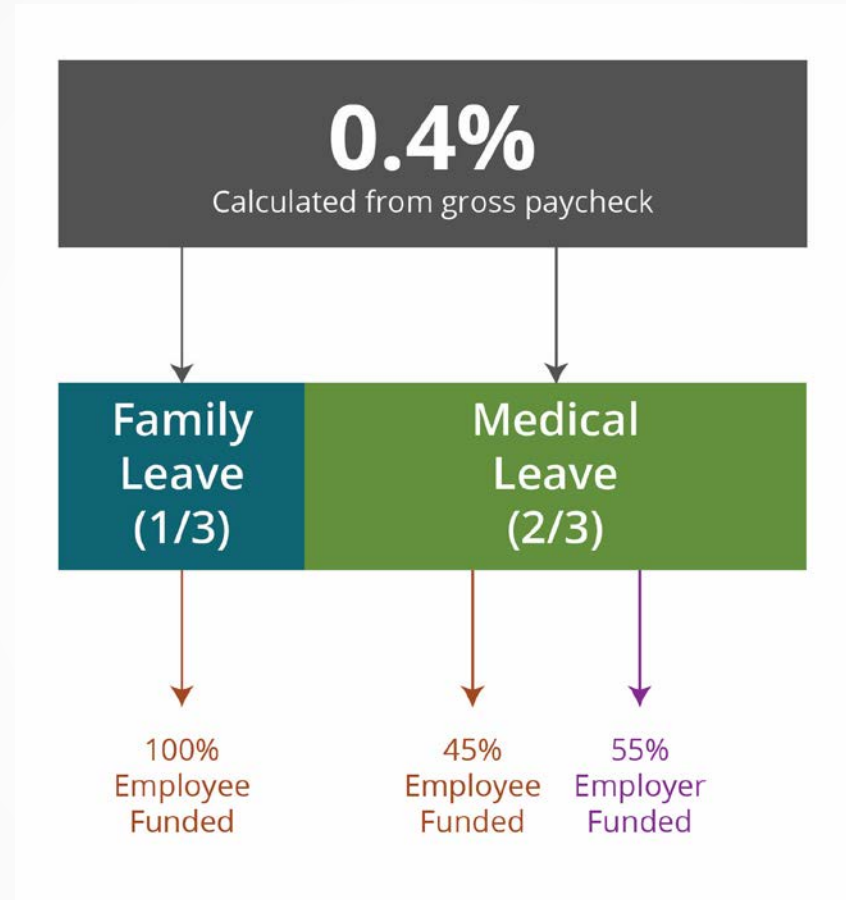
820 Hours

worked during the qualifying period.
Portable across employers.

20 Hours/week -> 41 Weeks
40 Hours/week -> 20.5 Weeks

Qualifying period is the first four of the last five completed calendar quarters from the leave date.

Premiums



\$50,000/year wage \Rightarrow Employee: \$126.67 • Employer: \$73.33

Small businesses with fewer than 50 employees don't pay employer premium.

Still required to remit employee portion of premium and all reporting requirements

Premium Calculation

1. Calculate Premium (Earned \$2500 in Gross Wages)

▶ $\$10 = \$2500 * .004$

2. Calculate Employer & Employee Portion

▶ $\$3.67^1 = \$10 * .3667$

▶ $\$6.33 = \$10 * .6333$

¹Fewer than 50 employees: Employer not required to pay employer portion.

Calculations for state plan only. Voluntary Plan employers will use different method.

Reporting

- ▶ Employers will remit premiums to ESD on a quarterly basis starting April 30, 2019

- ▶ Calendar Quarters:

Jan. – Mar.

Apr. – Jun.

Jul. – Sept.

Oct. – Dec.

**Each calendar quarter,
employers will report:**

- Full Name
- Social Security Number (or ITIN)
- Wages earned
- Hours worked
- Total premium deducted from all employees, if any



Reporting in 2019

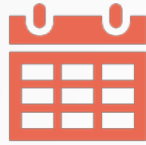
- ▶ Premiums should be withheld with each paycheck
- ▶ Employers cannot collect missed premiums in later pay periods
- ▶ Reporting portal development ongoing
 - ▶ Will be separate from UI reporting



Reporting: Anticipated Process in 2019

- ▶ First report April 2019
 - ▶ Report wages and hours worked
- ▶ Department then calculates premium bill
 - ▶ Based on employer reporting
- ▶ Submit payment to department
 - ▶ Separate from UI payment

Small business assistance



\$3,000

Grants if you hire a temporary employee to replace an employee on leave for more than seven days.



Up to **\$1,000**

Grants for significant additional wage-connected costs.

Who is eligible?

- ▶ Employers with between 50-150 employees
- ▶ Employers with between 1-49 employees who elect to pay the employer share of premiums

Calculating Business Size

Quarter 1
20 employees

Quarter 2
40 employees

Quarter 3
40 employees

Quarter 4
140 employees

Average:
60 employees

Calculated **September 30** each year.

- Headcount, not FTE or other counting method
- Based on required quarterly reporting
- Once counted, set for year

Paid Sick Leave and FMLA

- ▶ Paid Sick Leave and Paid Family and Medical Leave can not be used at the same time.
- ▶ In most cases Paid Family and Medical Leave runs concurrently with FMLA.

Collective Bargaining Agreements

“Nothing in this chapter requires any party to a collective bargaining agreement in existence on **October 19, 2017**, to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this chapter unless and until the existing agreement is reopened or renegotiated by the parties or expires.”

Self Employed

- ▶ Can elect to participate
 - Sole proprietor, independent contractor, partner, or joint venture
- ▶ Opt-in for 3 years initially, 1 year after initial period
 - Must work for 820 hours to qualify for benefits
- ▶ Must pay employee portion of premium
 - Must report wages and hours worked if you opt-in

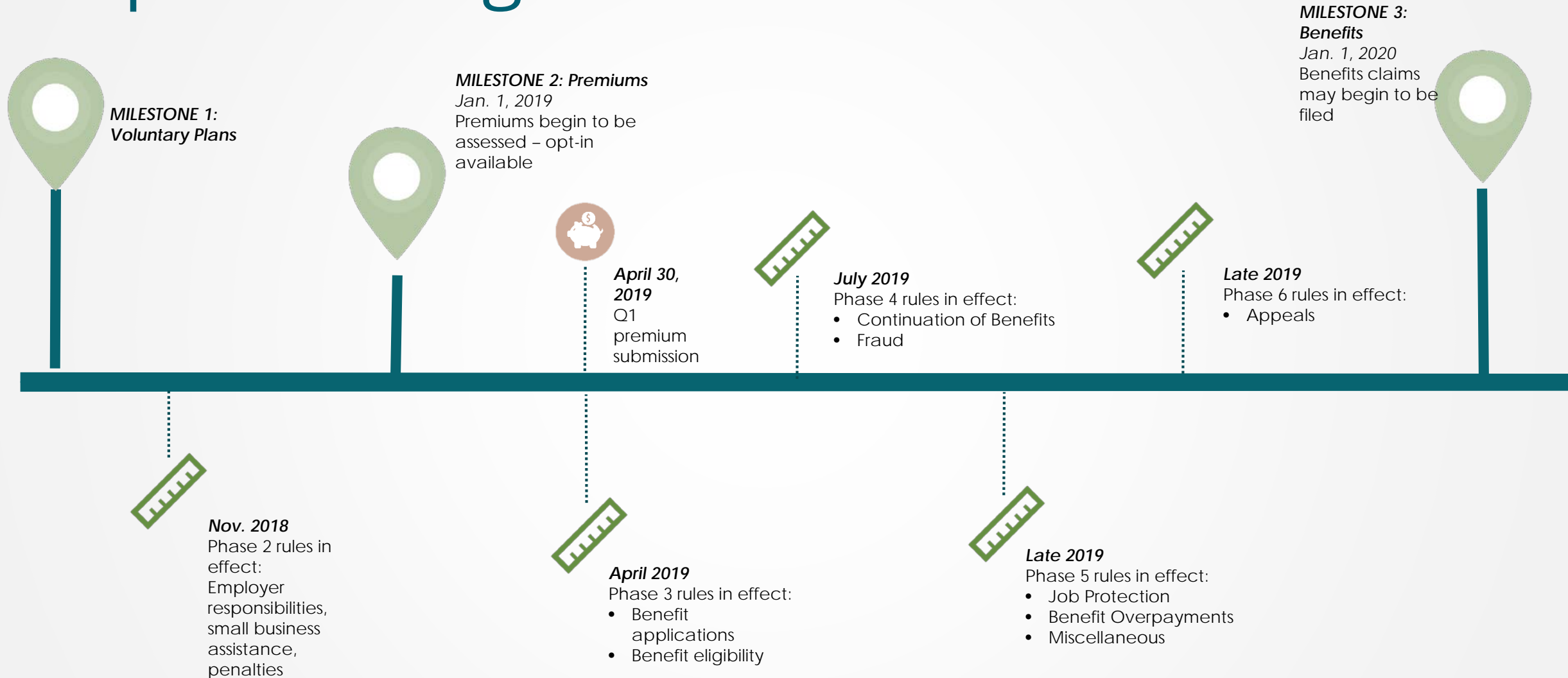


Voluntary Plans

- ▶ Applications available now
- ▶ \$250 application fee
 - Reapproved for first 3 years, then only if changed
- ▶ Download guide at paidleave.wa.gov/voluntary-plans



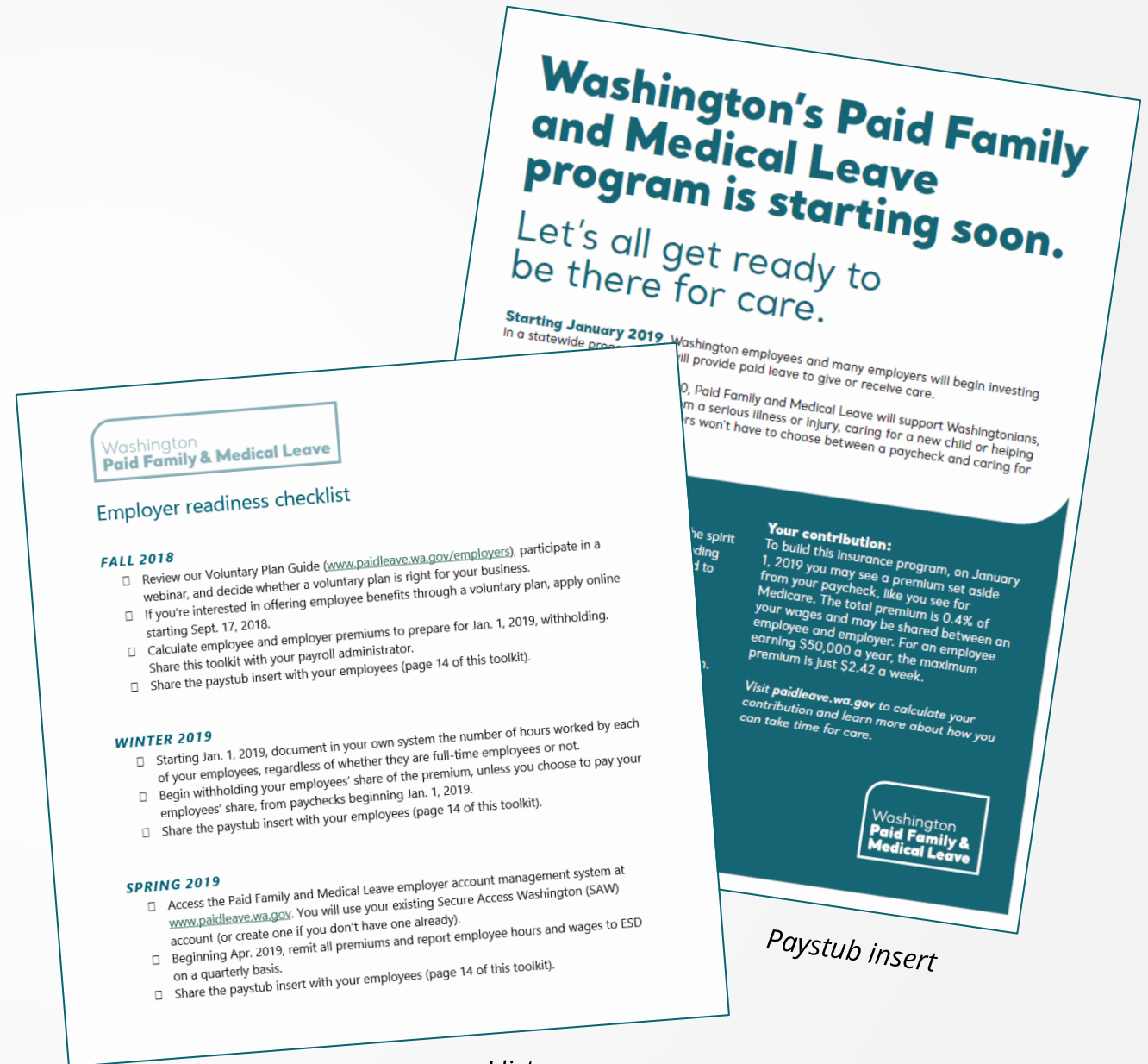
Implementing in Phases



Employer Toolkit

EMPLOYER TOOLKIT CONTENTS:

- ▶ About This Toolkit
- ▶ About the Program
 - ▶ Employer Responsibilities
 - ▶ Premiums
 - ▶ Reporting
 - ▶ About the Benefit
- ▶ Readiness Checklist
- ▶ Sample Employee Communications
 - ▶ Employee Handbook Materials
 - ▶ Sample text for a blog, newsletter or email
 - ▶ Sample paystub insert/attachment
- ▶ Document Change Log



Readiness checklist

Paystub insert

More To Come



Reporting, application,
and benefit tools being
built now.



Rulemaking is ongoing.
Benefits phases have
started.



Customer Care Team are
answering calls.

Learn More



Employer Webinar Series
[Paidleave.wa.gov/events](https://paidleave.wa.gov/events)



Employer Toolkit
[Paidleave.wa.gov/employers](https://paidleave.wa.gov/employers)

Continue the Conversation



Give us Feedback:
[SURVEY LINK](#)



Email us:
paidleave@esd.wa.gov



Call us:
833-717-2273



Our Website:
paidleave.wa.gov



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