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counsel for employers

Welcome!
The webinar will begin shortly.
Taking notes? There's a link to a handout in this morning's reminder email.

**PAID FAMILY AND MEDICAL LEAVE:
HOW TO PLAN, PREP & LAUNCH**

October 29, 2019

Today's Presenter and Moderator



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The information presented here is not intended to be legal advice

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We are advisors on complex employment-related issues for companies on the west coast. We offer a suite of services to employers focused on employment law, learning and development, safety, workers' comp and HR best practices.

Administrative items

- For a copy of the handout, see the link in the reminder email you received this morning
- Use the **Q&A** button on the bottom of your screen to ask questions
- Next week you'll receive a link to the recording & FAQs
- Based on the info we have today



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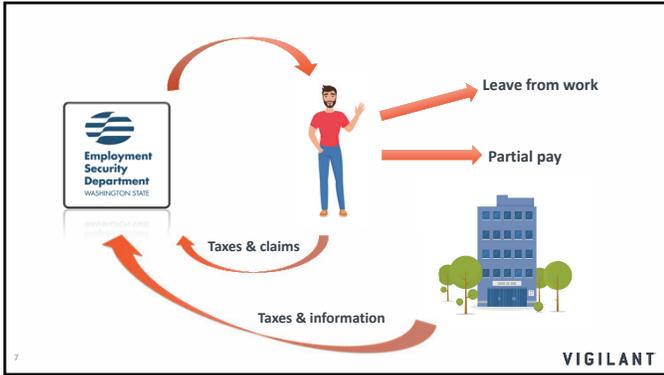
What we'll cover today

- PFML in a nutshell
- Who are covered employers?
- What do employees get?
- Revamping your leave administration
- What do you need to do now?
- What do you need to do in 2020?

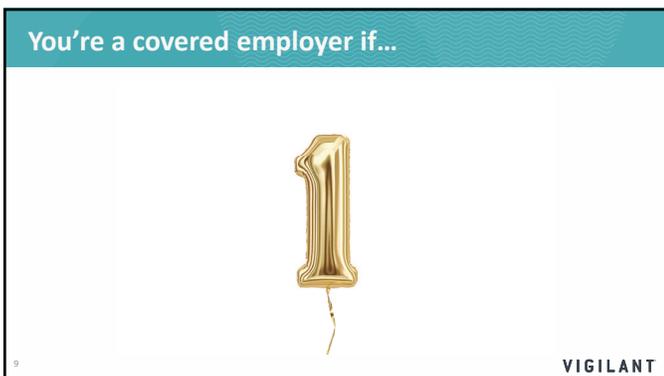
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The exceptions

- Federal government, tribes & independent contractors
- You have a state-approved voluntary plan
- You have a union (maybe)



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You have a collective bargaining agreement

If your CBA was in place as of October 19, 2017...
don't collect premiums from union employees and
 your union employees *can't use* benefits until the
 contract is **re-opened, re-negotiated, or expires**



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What happens next?

When your CBA is re-opened, re-negotiated, or expires



And...be prepared to send prior wage and hour info

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What do your employees get?

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First, who's eligible?

- Did your employee work 820 hours for any WA employer in first 4 of 5 last quarters (or last 4 of 5)?
- Did your employee miss 8 consecutive hours of work?
- Does your employee need family or medical leave?



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Family and medical leave defined

- Family leave
 - Care of **family member's/serious health condition**
 - Child, grandchild, grandparent, grandparent in-law, parent, sibling, step-sibling, or spouse
 - Serious health condition = FMLA
 - Bond with newborn or newly placed child in first 12 months
 - Military exigency
- Medical leave
 - Care of own serious health condition

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Who decides eligibility?

ESD!

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If ESD is doing the work, why should I care?



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You need to understand PFML leave because...

- HR is traditionally a resource for this information
- You may need to grant conditional leave when there isn't other protected leave or accrued paid leave
 - You're not an FMLA covered employer
 - Employee isn't eligible for FMLA yet
 - Employee hasn't earned PTO or sick leave yet



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Once eligible, employees receive

- Leave
- Partial pay
- Benefits continuation (maybe)
- Job protection (maybe)
- No retaliation



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Leave



- Can be intermittent or reduced schedule
- Claim year is the 52 week period beginning Sunday the week a claim starts

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Who decides the leave length?

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Partial pay

Employee's Average Weekly Wage

State's Average Weekly Wage

90% + AWW

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Benefits continuation

- Law says continue benefits "if required by" FMLA
BUT
- Draft rule says continue benefits if the employee "meets the eligibility requirements" of the FMLA, continue benefits for the *entire duration of PFML*

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Job protection

- If the...
 - employer has 50+ WA employees
 - employee has worked for you for 12 months
 - employee has worked at least 1250 hours in the last 12 months
- Then the employee gets same or equivalent job on return

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No retaliation

- Can't interfere, restrain, deny the exercise or attempt to exercise a PFML right
- Can't discharge or discriminate if someone complains or testifies about PFML rights



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Revamping your leave administration

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A snapshot of your PFML leave process

- Get notice
- Give notice
- Wait for ESD response
- Apply other laws & leaves
- Review options for pay

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Get notice



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Notice of foreseeable leave

- 30 days or as soon as practicable
- EE gives timing & duration
- If no notice, benefits denied by the amount of time the employee failed to give notice
- Document and share w/ESD



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Notice of unforeseeable leave



- As soon as is practicable
- If no notice, benefits denied by the amount of time the employee failed to give notice

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Give notice



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When to give the employee notice

- When the employee will miss or has missed more than 7 consecutive days of work, give notice:
 - by the 5th business day after the 7th missed day *OR*
 - by the 5th business day after you are aware that the absence is due to family or medical leave, whichever is later



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When to give employee notice...simplified

- Best practice: ASAP
- Use the ESD form
- Keep a copy of the notice in the personnel file
- Respond to ESD accurately & with detail



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Wait for ESD response



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ESD waiting period

Sunday 1	Monday 2	Tuesday 3
Wednesday 4	Thursday 5	Friday 6
Saturday 7		

- 7 day waiting period
 - Sunday through Saturday of first week employee takes minimum 8 consecutive hours
 - No benefits paid this week, but waiting period counts as leave
- Consider conditional leave

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Apply other laws & leaves



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Key differences between FMLA & PFML

FMLA	PFML
<ul style="list-style-type: none"> • Unpaid • ER approves • ERs with 50+ EEs • Eligible if 50+, 1250, 12 mos • 12 weeks or 26 military care • Spouse/children/parents • Job protection if 1250 hrs, 12 mos & w/in 75 miles of 50+ EEs 	<ul style="list-style-type: none"> • Paid • ESD approves • ERs with 1+ EEs • Eligible if 820 hrs in 4/5 qtrs • 12/14/16/18x typical wkweek hrs • Spouse/children/parents/grandkids grandparents/siblings • Job protection if 1250 hrs, 12 mos

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FMLA runs concurrently with PFML

 Two pumpkins are shown side-by-side. The one on the left is a traditional jack-o'-lantern with a carved face and glowing light. The one on the right has a sad face drawn on it with large, watery eyes and a downturned mouth. The word "VIGILANT" is printed in the bottom right corner of the image frame.

FMLA runs concurrently...or does it?!

- Law says you can require concurrent FMLA & PFML ... **but!** ...
- You can't force use of PFML and ESD won't look at prior FMLA use
- What we know for sure:
 - Concurrent if the other way around
 - If your employee took FMLA this year, PFML available for same reason in 2020



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Other leaves to consider

- ADA/WLAD
- Pregnancy disability
- Domestic violence
- Military family leave
- Paid Sick Leave (+ Seattle & Tacoma ordinances)
- Family Care Act



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Review options for pay



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When can an employee get partial pay?

Can't get PFML if:

- Receiving worker's comp, unemployment insurance, or government disability;
- Working, suspended, or receiving remuneration; or
- Collecting vacation, sick, PTO, or salary continuation (KOS) from the employer

Can get PFML if:

- Collecting Short Term Disability (STD) and Long Term Disability (LTD) as a company benefit; or
- Collecting vacation, sick, PTO or salary continuation **IF** the amount has been designated by the employer as a **supplemental benefit payment**

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Supplemental benefit payments



- Paid sick, vacation, PTO, and/or salary continuation is designated as an SBP
 - Voluntary by employer to designate
 - Voluntary by employee to use
- SBPs do not count as wages
 - Don't report to ESD as wages and don't withhold premiums

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Do you want to designate SBPs?

Pros

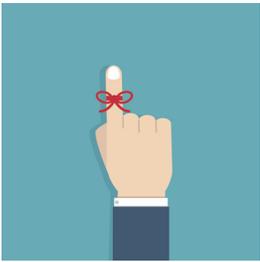
- Employees receive more than the state range of \$100 - \$1000/week
- Eats up accrued paid leave
- Employer pays less premium

Cons

- Employees might receive more than full wage
- May be difficult to administer
- Employees could be incentivized to take time off
- You may already have STD or LTD plan that supplements state payments

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Check your existing STD/LTD plan!



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What do you need to do now?

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The to-do list

- Review leave, attendance, discipline & bonus policies
- Add a PFML policy
- Review forms
- Review STD/LTD plan
- Get notice form from ESD
- Train supervisors & generalists
- Post ESD poster
- Communication to employees?



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Leave policies

Vacation	Sick	PTO	Paid parental
WFLA	Pregnancy disability	FMLA	Personal leave

- Get rid of WFLA and all references!
- Scrub all policies for employee discretion
- If a paid leave, are you willing to pay for stacked leave?

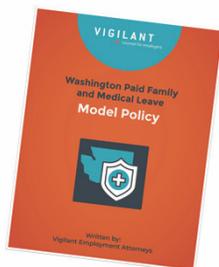
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Attendance, discipline & bonus

- Make sure attendance doesn't penalize PFML use
- Check no-fault point systems and bonuses
- Call-in policies apply when PFML is being taken
- "Discipline will take into consideration all facts at hand, including protections afforded by WPSL and PFML."

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Add a PFML policy...Vigilant model coming soon!



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The to-do list

- Review leave, attendance, discipline & bonus policies
- Add a PFML policy
- Review forms & tracking sheet
- Review STD/LTD plan
- Get notice form from ESD
- Prepare supervisors
- Post ESD poster
- Communication to employees?



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What do you need to do in 2020?

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Keep on keepin' on



- Keep filing quarterly reports
- Keep records for 6 years
- Keep paying your portion of premiums if 50+ or voluntarily
- Keep applying FMLA, ADA, WLAD & PSL

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Use caution and your resources



Consider an SBA grant from ESD

Call your attorney before firing someone who asked or is using PFML

Use the Vigilant FAQs

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Most importantly...



Stay Calm

And

Breathe!

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Questions?



ESD Resources

- ESD website: <https://paidleave.wa.gov>
- ESD premium page: <https://paidleave.wa.gov/premiums>
- ESD Customer Care Team: 833-717-2273 (Mon-Fri, 8:30am – 4:30pm)
paidleave@esd.wa.gov



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Vigilant Membership?
Interested in Vigilant membership?
Contact Amanda Rusk, 800-733-8621
AmandaR@vigilant.org
