



ahead of the curve

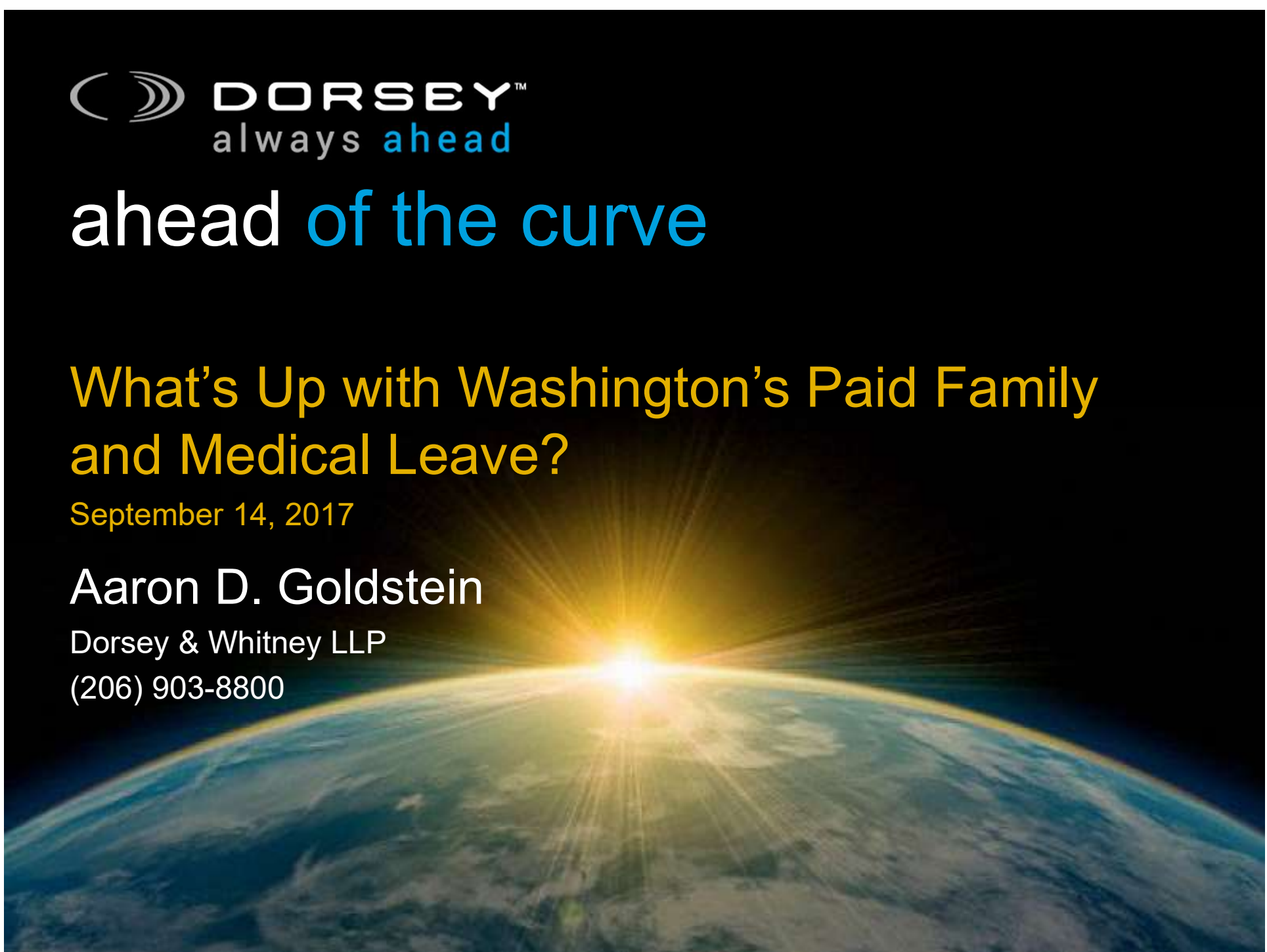
What's Up with Washington's Paid Family and Medical Leave?

September 14, 2017

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Washington Paid Family and Medical Leave Highlights

- Fifth state to guarantee paid family and medical leave to eligible employees after California, New Jersey, Rhode Island and New York.
- New law goes into effect on January 1, 2020 and applies to all Washington Employers.

Washington Paid Family and Medical Leave Highlights

- Government managed and funded through employer and employee contributions, somewhat like workers' comp.
- Less onerous than an unfunded requirement that employers provide paid family and medical leave.

Washington Paid Family and Medical Leave Highlights

- Washington's leave is very generous compared to other states.
 - Washington: up to 16 weeks of combined family and medical leave (12 weeks if only medical or only family).
 - California: 6 weeks family leave.
 - New Jersey: 6 weeks of family leave.
 - Rhode Island: 4 weeks of family leave.

Washington Paid Family and Medical Leave Highlights

- Washington's leave is very generous compared to other states.
 - Washington: up to 90% of weekly wages for low income workers and up to \$1,000 per week.
 - California: 55-70% of wages up to \$1,173 in 2017.
 - New Jersey: 66% of wages up to \$633 in 2017.
 - Rhode Island: average weekly benefit was \$519 in 2015.

Washington Paid Family and Medical Leave

What is Covered?

- Family Leave
 - Employees can take up to 12 weeks of paid family leave in any given 52 week period.
 - Family leave can be used to care for a newborn or newly adopted child; or
 - A family member with a serious health condition.
 - “Family member” includes child, spouse, domestic partner, parent, parent-in-law, sibling, grandparent, or grandchild.

Washington Paid Family and Medical Leave

What is Covered?

- Medical Leave
 - 12 weeks of paid medical leave for the employee's own serious health condition.
 - Plus an additional 2 weeks for pregnancy related complications.
- An employee may take up to 16 weeks of combined family and medical leave in a 52 week period, plus an additional 2 weeks for pregnancy for total of 18 weeks.

Washington Paid Family and Medical Leave

What is Covered?

- A “serious health condition” is an illness, injury, or physical or mental condition that involves:
 - In-patient care at a medical facility; or
 - Continuing treatment by a health care provider with:
 - A period of incapacity of more than 3 consecutive days; or
 - A period of incapacity plus various courses of continuing treatment

Washington Paid Family and Medical Leave

What is Covered?

- What about part time employees?
 - A part time employee gets 12 weeks each of family or medical leave, with a combined total of 16 weeks, at the average hours/wage the employee earned per week.
 - For example, an employee that works on average 20 hours per week at \$20 per hour would use \$400 per week to calculate his or her paid leave benefit.

Washington Paid Family and Medical Leave

Who is Covered?

- Employees that worked at least 820 hours in the previous year are covered.
- Paid family and medical leave are portable from job to job. Employees can use hours worked from prior jobs in the year to qualify.
- Independent contractors and self-employed workers may elect coverage.
- Employers with 50 or more employees must participate if any are Washington employees.

Washington Paid Family and Medical Leave

Who is Covered?

- An employee is covered if he or she:
 - Provides services to the employer in Washington;
 - Provides services to the employer in multiple states, and the employee's base of operations is in Washington; or
 - Provides services to the employer in multiple states, the employee's base of operations is in multiple states, and the employee resides in Washington.

Washington Paid Family and Medical Leave

Who is Covered?

- Employers may obtain a waiver for any employee who:
 - Is physically based outside of Washington;
 - Is employed in Washington on a limited or temporary schedule; and
 - Is not expected to be employed in Washington for 820 hours in a 52 week period.

Washington Paid Family and Medical Leave

Who is Covered?

- The following are not covered:
 - Any absence caused by the employee willfully causing the sickness or injury prompting leave;
 - Any leave commencing before the employee becomes eligible;
 - Any employee who is on suspension from employment;
 - Any days of absence where the employee (if medical leave) or family member (if family leave) works his or her usual day; or
 - An employee who knowingly makes a false statement or fails to report a material fact in obtaining leave.

Washington Paid Family and Medical Leave

How Much Does it Pay?

- Employees earning up to half of the state's average weekly wage (\$1,082 as of 2015) will get 90% of their weekly wage per week.
- Employees earning more will get 45% of the average state weekly wage plus 50% of the amount of their wages above 50% of the state's average wage, up to a cap of 90% of the state's average wage (currently \$1,000).

Washington Paid Family and Medical Leave

How Much Does it Pay?

- Examples:
 - A person who usually earns \$540 per week (minimum wage) would get \$486 per week (90%).
 - A person who usually earns \$1,040 per week would get \$736 per week (71%).
 - A person who usually earns \$1,635 per week would get \$1,000 per week (61%).

Washington Paid Family and Medical Leave

Who Pays for it and How Much?

- Starting January 1, 2019, the Employment Security Department will begin assessing premiums to employers and employees.
- The initial premiums will be 0.4% of wages, and will be adjusted annually (between 0.1% and 1%).
- Employees will pay 63% of the weekly premium and employers will pay the remaining 37%.
- Companies with fewer than 50 employees are exempt from the employer share, but employees of those companies will still pay.

Washington Paid Family and Medical Leave

Who Pays for it and How Much?

- Examples:
 - For a minimum wage employee, the employee will contribute \$1.36 per week and the employer will contribute \$0.80 per week.
 - For an employee earning \$54,000 per year, the employee will contribute \$2.62 per week and the employer will contribute \$1.54 per week.
 - For an employee earning \$85,000 per year, the employee will contribute \$4.12 per week and the employer will contribute \$2.42 per week.

Washington Paid Family and Medical Leave Who Pays for it and How Much?

- Assistance for smaller employers:
 - A company with fewer than 150 employees may receive the following grants up to 10 times per year.
 - \$3,000 if the company hires a temporary worker to cover an employee on paid leave for 7 or more days.
 - \$1,000 to pay for significant wage-related costs due to employee leave.
 - Companies with fewer than 50 employees may participate in paid leave to be eligible for small business assistance funds.

Washington Paid Family and Medical Leave Job Protection

- Employees utilizing paid family or medical leave will continue to be protected under the FMLA.
- The statute also protects employees' right to return to:
 - The same position the employee held when leave began;
or
 - An equivalent position with equivalent benefits, pay, etc.
- Employees may not suffer the loss of any employment benefits accrued before the date when leave began.
- Employees are not entitled to accrue new benefits or seniority during leave.
- Employees are not entitled to any benefits other than what they would have obtained had leave not been taken.

Washington Paid Family and Medical Leave Job Protection

- Employers may require health care provider certification prior to an employee's return to work.
- Employers may require employees to report periodically to the employer on status and intention to return to work.
- Employers may deny job protection to those who:
 - Are in the highest paid 10% of the employer's employees within 75 miles.
 - Denial is necessary to prevent grievous economic injury to the employer
 - The employee elects not to return to work after getting notice of employer need.

Washington Paid Family and Medical Leave Employee Notice

- Leave for the birth of a child
 - If the need for leave is foreseeable, the employee must provide the employer with 30 days' notice.
- Leave for a serious health condition (employee's or family members')
 - Employee must make reasonable efforts to schedule treatments to not disrupt employer's operations, subject to healthcare provider approval.
 - Employee must give 30 days' notice if possible.

Washington Paid Family and Medical Leave Miscellaneous

- What if the employer already has a paid leave plan?
 - Employers may apply for approval of their own paid family and medical leave plan.
 - Benefits must be at least equivalent to state plan.
 - Must pay out as much as an employee would get under state plan.
 - Must offer at least 1/2 the duration of leave with at least the same total payout (*e.g.* may offer twice the payout per week as the state plan for 6 weeks of family or medical leave, 7 weeks combined).
 - Employee contributions cannot exceed the state plan.²²

Washington Paid Family and Medical Leave Miscellaneous

- What if the employer already has a paid leave plan?
 - The employer must maintain employee health benefits during leave.
 - The employer must pay a \$250 fee to have its plan reviewed.
 - The employer must offer the plan to anyone who has worked for at least 9 months and 965 hours during the last 12 months.
 - The private plan must be approved annually for the first 3 years.

Washington Paid Family and Medical Leave Miscellaneous

- What if the employer already has a paid leave plan?
 - Does paid sick leave under RCW 49.46.210 count towards whether the company already has a paid leave plan?
 - No. The employer's own family and medical leave plan must pay out at least as much as the state plan, not counting any employer payment towards sick leave under RCW 49.46.210.

Washington Paid Family and Medical Leave Miscellaneous

- Record Keeping Requirements
 - Employers must keep records for six years relating to the collection of family and medical leave premiums.
 - This includes all records necessary to calculate premiums and payouts, as well as records of all premiums collected.
 - An employer that fails to keep required records will pay up to \$250 per violation.

Washington Paid Family and Medical Leave Miscellaneous

- Penalties
 - An employer that knowingly fails to pay the full premiums is liable for two times the premiums less the amount paid, plus interest.
 - Employers operating private plans rather than using the state plan will be fined \$1,000 for the first violation and \$2,000 for the second and subsequent violations.

Washington Paid Family and Medical Leave Miscellaneous

- No Retaliation Allowed
 - Employers may not interfere with or discriminate against employees that take advantage of or participate in paid family and medical leave.
 - Employers who do so are liable for any lost wages or benefits and any other monetary losses that are a direct result of the violation.
 - For willful violations, employers may be liable for double damages.

Washington Paid Family and Medical Leave Miscellaneous

- Employees Receiving Other Benefits
 - Employees are not entitled to paid family and medical leave under the state program in any week where they receive:
 - Unemployment Benefits
 - Workers' Compensation
 - Disability Insurance

Washington Paid Family and Medical Leave Employer Takeaways

- Utilization of leave will likely increase.
 - Paid leave is less economically burdensome on employees and is a substantial new benefit.
 - Employees are themselves paying into the system and are likely to want to recoup their investment.
 - The state is pushing an awareness campaign that is likely to spread the word that this new benefit is available.

Washington Paid Family and Medical Leave Employer Takeaways

- Employers will need to be more vigilant about documentation and healthcare provider certification.
 - Given the economic value of the benefit, some employees may seek to push the limits of what is appropriate use of paid family and medical leave.
 - Employers who may have gotten away with not getting healthcare provider certification will want to be more diligent in requiring it.
 - You don't want to be a part of an employee's fraud.

Washington Paid Family and Medical Leave Employer Takeaways

- Beware the interplay with FMLA and ADA.
 - An employee may not be eligible for FMLA leave but could be eligible for paid family and medical leave under state law.
 - FMLA – 12 months of service and 1,250 hours worked over the last 12 months. New employees start at 0.
 - State paid family and medical leave, 820 hours worked over the last 9 months. Hours worked for prior employer roll over to new job for eligibility.

Washington Paid Family and Medical Leave Employer Takeaways

- Beware the interplay with FMLA and ADA.
 - Just because an employee has exhausted state paid family and medical leave, doesn't mean the employee has exhausted FMLA. Employee might not be FMLA qualified during use of state paid leave.
 - Just because an employee has exhausted state paid family and medical leave, doesn't mean the employee isn't entitled to additional unpaid leave under the ADA.

Washington Paid Family and Medical Leave Employer Takeaways

- Double damage means more lawsuits.
 - Because employees can seek twice their lost wages, as well as attorney fees, expect aggressive litigation in cases where there is evidence of intent to retaliate or discriminate against people taking or trying to take leave.

Washington Paid Family and Medical Leave Employer Takeaways

- Beware retaliation and discrimination claims
 - Whenever an employee utilizes or inquires about protected leave (whether paid or under the FMLA or ADA), there is a presumption that any adverse employment action shortly afterwards is retaliatory.
 - Make sure you are documenting poor performance so employees cannot use leave requests as a basis for invoking job protection.
 - Make sure you are enforcing your healthcare provider certification requirements equally. Requiring documentation from one employee but not another is a recipe for a discrimination claim.

Washington Paid Family and Medical Leave Employer Takeaways

- Multiple state regimes makes a single paid family and medical leave plan difficult.
 - Many employers want to give all of their employees the same benefits.
 - This is becoming more difficult as different states enact conflicting leave regimes.
 - Consider a state-by-state model.

Q & A



Thank you!



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