

**Chapter 49.77 RCW
MILITARY FAMILY LEAVE ACT**

Sections

- 49.77.010 Military family leave.
- 49.77.020 Definitions.
- 49.77.030 Entitlement to leave—Employment protection—Notice requirement—Administration.
- 49.77.040 Prohibited acts.
- 49.77.050 Employee complaints.
- 49.77.060 Civil penalties.
- 49.77.070 Damages—Equitable relief—Parties to action—Costs.
- 49.77.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

RCW 49.77.010 Military family leave. In order to support the families of military personnel serving in military conflicts, and to assure that these families are able to spend time together after being notified of an impending call or order to active duty and before deployment and during a military member's leave from deployment, the legislature hereby creates the military family leave act. [2008 c 71 § 1.]

RCW 49.77.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of labor and industries.

(2) "Employee" means a person who performs service for hire for an employer, for an average of twenty or more hours per week, and includes all individuals employed at any site owned or operated by an employer, but does not include an independent contractor.

(3) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state; (b) the state, state institutions, and state agencies; and (c) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(4) "Period of military conflict" means a period of war declared by the United States Congress, declared by executive order of the president, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to either sections 12301 and 12302 of Title 10 of the United States Code or Title 32 of the United States Code.

(5) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner. [2017 3rd sp.s. c 5 § 92; 2008 c 71 § 2.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

RCW 49.77.030 Entitlement to leave—Employment protection—Notice requirement—Administration. (1) During a period of military conflict, an employee who is the spouse of a member of the armed forces of the United States, national guard, or reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen days of unpaid leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment or when the military spouse is on leave from deployment.

(2) (a) Except as provided in (b) of this subsection, any employee who takes leave under this chapter for the intended purpose of the leave is entitled, on return from the leave:

(i) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment at a workplace within twenty miles of the employee's workplace when leave commenced.

(b) The taking of leave under this chapter may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(c) Nothing in this section entitles any restored employee to:

(i) The accrual of any seniority or employment benefits during any period of leave; or

(ii) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) Nothing in this subsection (2) prohibits an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(3) An employer may deny restoration under subsection (2) of this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

(a) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(b) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(c) The leave has commenced and the employee elects not to return to employment after receiving the notice.

(4) If the employee on leave under this chapter is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period.

(5) An employee who seeks to take leave under this chapter must provide the employer with notice, within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, of the employee's intention to take leave under this chapter.

(6) An employee who takes leave under this chapter may elect to substitute any of the accrued leave to which the employee may be entitled for any part of the leave provided under this chapter.

(7) The department shall administer the provisions of this chapter, and may adopt rules as necessary to implement this chapter. [2017 3rd sp.s. c 5 § 93; 2008 c 71 § 3.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

RCW 49.77.040 Prohibited acts. (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(a) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter. [2017 3rd sp.s. c 5 § 94.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: "Sections 90 through 98 of this act take effect December 31, 2019." [2017 3rd sp.s. c 5 § 103.]

RCW 49.77.050 Employee complaints. Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees. [2017 3rd sp.s. c 5 § 95.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

RCW 49.77.060 Civil penalties. An employer who is found, in accordance with RCW 49.77.050, to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than one thousand dollars for each violation. Civil penalties must be collected by the department and deposited into the family and medical leave enforcement account. [2017 3rd sp.s. c 5 § 96.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

RCW 49.77.070 Damages—Equitable relief—Parties to action—

Costs. (1) Any employer who violates RCW 49.77.040 is liable:

(a) For damages equal to:

(i) The amount of:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;

(ii) The interest on the amount described in (a)(i) of this subsection calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount described in (a)(i) of this subsection and the interest described in (a)(ii) of this subsection, except that if an employer who has violated RCW 49.77.040 proves to the satisfaction of the court that the act or omission which violated RCW 49.77.040 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of RCW 49.77.040, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under (a)(i) and (ii) of this subsection, respectively; and

(b) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) An action to recover the damages or equitable relief prescribed in subsection (1) of this section may be maintained against any employer in any court of competent jurisdiction by any one or more employees for and on behalf of:

(a) The employees; or

(b) The employees and other employees similarly situated.

(3) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant. [2017 3rd sp.s. c 5 § 97.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

RCW 49.77.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any

statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 133.]