

Chapter 50A.30 RCW
VOLUNTARY PLANS

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RCW 50A.30.010 In general. (1) An employer may apply to the commissioner for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both. The application must be submitted on a form and in the manner as prescribed by the commissioner in rule. The fee for the department's review of each application for approval of a voluntary plan is two hundred fifty dollars.

(2) The benefits payable as indemnification for loss of wages under any voluntary plan must be separately stated and designated separately and distinctly in the plan from other benefits, if any.

(3) Neither an employee nor his or her employer are liable for any premiums for benefits covered by an approved voluntary plan.

(4) An employee may only receive payment of benefits for family leave, medical leave, or both from one approved plan at a time. An employee who qualifies for benefits and is simultaneously covered by more than one plan under this title will receive benefits under the plan for which the employee has worked the most hours during the employee's qualifying period. The commissioner must adopt rules to allow benefits or prevent duplication of benefits to employees simultaneously covered by one or more approved voluntary plans and the state program.

(5) The commissioner must approve any voluntary plan as to which the commissioner finds that there is at least one employee in employment and all of the following exist:

(a) The benefits afforded to the employees must be at least equivalent to the benefits the employees are entitled to as part of the state's family and medical leave program, including but not limited to the duration of leave. The employer must offer at least one-half of the length of leave as provided in RCW 50A.15.020(3) with pay and provide a monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive as part of the state-run program. The employer may

offer the same duration of leave and monetary benefits as offered under the state program.

(b) The sick leave an employee is entitled to under RCW 49.46.210 is in addition to the employer's provided benefits and is in addition to any family or medical leave benefits.

(c) The plan is available to all of the eligible employees of the employer employed in this state, including future employees.

(d) The employer has agreed to make all required payroll deductions, including that:

(i) In the case of plan termination or withdrawal, the employer must remit to the department all required moneys under RCW 50A.30.045 and 50A.30.065(3); and

(ii) If the employer has an approved voluntary plan for either medical leave or family leave but not both, the employer is still obligated to remit to the department premiums owed to the state plan for the portions not covered by the employer's approved voluntary plan.

(e) The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the commissioner finds that the employer has given notice of withdrawal from the plan in a manner specified by the commissioner in rule. The plan may be withdrawn by the employer on the date of any law increasing the benefit amounts or the date of any change in the rate of employee premiums, if notice of the withdrawal from the plan is transmitted to the commissioner not less than thirty days prior to the date of that law or change. If the plan is not withdrawn, it must be amended to conform to provide the increased benefit amount or change in the rate of the employee's premium on the date of the increase or change.

(f) The amount of payroll deductions from the wages of an employee in effect for any voluntary plan may not exceed the maximum payroll deduction for that employee as authorized under RCW 50A.10.030. The deductions may not be increased on other than an anniversary of the effective date of the plan, except to the extent that any increase in the deductions from the wages of an employee do not exceed the maximum rate authorized under the state program.

(g) The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, is eligible for the plan benefits if the employee meets the requirements of RCW 50A.15.010 and has worked at least three hundred forty hours for the employer during the twelve months immediately preceding the date leave will commence.

(h) The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, who takes leave under the voluntary plan is entitled to the employment protection provisions contained in RCW 50A.35.010 if the employee has worked for the employer for at least nine months and nine hundred sixty-five hours during the twelve months immediately preceding the date leave will commence.

(i) The voluntary plan provides that the employer maintains the employee's existing health benefits as provided under RCW 50A.35.020.

(6) (a) The department must conduct a review of the expenses incurred in association with the administration of the voluntary plans during the first three years after implementation and report its findings to the legislature.

(b) The review must include an analysis of the adequacy of the fee in subsection (1) of this section to cover the department's administrative expenses related to reviewing and approving or denying

the applications and administering appeals related to voluntary plans. The review must include an estimate of the next year's projected administrative costs related to the voluntary plans. The legislature shall adjust the fee in subsection (1) of this section as needed to ensure the department's administrative expenses related to the voluntary plans are covered by the fee.

(c) If the current receipts from the fee in subsection (1) of this section are inadequate to cover the department's administrative expenses related to the voluntary plans, the department may use funds from the family and medical leave insurance account under RCW 50A.05.070 to pay for these expenses. [2020 c 125 s 9; 2019 c 13 s 56; 2018 c 141 s 7; 2017 3rd sp.s. c 5 s 14. Formerly RCW 50A.04.600.]

RCW 50A.30.015 Voluntary plans—Reapproval. The employer must have the voluntary plan approved by the commissioner annually for the first three years. After the first three years, the employer is only required to have the approval if the employer makes changes to the plan that were not mandated by changes to state law. [2017 3rd sp.s. c 5 s 16. Formerly RCW 50A.04.605.]

RCW 50A.30.020 Employee eligibility. (1) To be eligible for any family and medical leave, an employee must be in employment for eight hundred twenty hours during the qualifying period, by an employer with a voluntary plan or an employer utilizing the state family and medical leave plan. An employee qualifies for benefits under an employer's voluntary plan after the employee works at least three hundred forty hours for the current employer.

(2) An employer with an approved voluntary plan may waive the requirements in subsection (1) of this section, in whole or in part, to allow an employee to be immediately eligible for coverage under the employer's voluntary plan.

(3) An employee who had coverage under the state plan retains coverage under the state plan until such time as the employee is qualified for coverage under the new employer's voluntary plan.

(4) An employee who was eligible for benefits under a voluntary plan is immediately eligible for benefits under a new employer's voluntary plan. [2019 c 13 s 57; 2017 3rd sp.s. c 5 s 22. Formerly RCW 50A.04.610.]

RCW 50A.30.030 Employees no longer covered. (1) An employee is no longer covered by an approved voluntary plan if family leave or the employee's medical leave occurred after the employment relationship with the voluntary plan employer ends, or if the commissioner terminates a voluntary plan.

(2) An employee who has ceased to be covered by an approved voluntary plan is, if otherwise eligible, immediately entitled to benefits from the state program to the same extent as though there had been no exemption as provided in this title. [2019 c 13 s 58; 2017 3rd sp.s. c 5 s 23. Formerly RCW 50A.04.615.]

RCW 50A.30.035 Voluntary plans—Posting of notice regarding plan. An employer with a voluntary plan must provide a notice

prepared by or approved by the commissioner regarding the voluntary plan consistent with the provisions of RCW 50A.20.020. [2020 c 125 s 10; 2017 3rd sp.s. c 5 s 25. Formerly RCW 50A.04.620.]

RCW 50A.30.040 Employee costs. An employer may assume all or a greater part of the cost of the voluntary plan than required under the state program. An employer may deduct from the wages of an employee covered by the voluntary plan, for the purpose of providing the benefits specified in this title, an amount not in excess of that which would be required if the employee was not covered by the plan. [2019 c 13 s 59; 2017 3rd sp.s. c 5 s 17. Formerly RCW 50A.04.625.]

RCW 50A.30.045 Voluntary plans—Remaining wage deductions upon withdrawal of plan. All deductions from the wages of an employee remaining in the possession of the employer upon the employer's withdrawal of the voluntary plan as a result of plan contributions being in excess of plan costs, that are not disposed of in conformity with the department's rules, must be remitted to the department and deposited in the family and medical leave insurance account. [2017 3rd sp.s. c 5 s 18. Formerly RCW 50A.04.630.]

RCW 50A.30.050 Voluntary plans—Employee contributions and income held in trust. Any employee contributions to and income arising from an approved voluntary plan received or retained by an employer under an approved voluntary plan are trust funds that are not considered to be part of an employer's assets. An employer must maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution. [2017 3rd sp.s. c 5 s 19. Formerly RCW 50A.04.635.]

RCW 50A.30.055 Voluntary plans—Successor employer. A voluntary plan in force and effect at the time a successor acquires the organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue the voluntary plan and may not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the commissioner. A successor may terminate a voluntary plan with notice to the commissioner and without a request to withdraw the plan within ninety days from the date of the acquisition. [2017 3rd sp.s. c 5 s 15. Formerly RCW 50A.04.640.]

RCW 50A.30.060 Amendment. (1) The commissioner must approve any amendment to a voluntary plan adjusting the provisions thereof, as to periods after the effective date of the amendment, when the commissioner finds: (a) That the plan, as amended, will conform to the standards set forth in this title; and (b) that notice of the amendment has been delivered to the employees at least ten days prior to the approval.

(2) Nothing contained in this section is intended to deny or limit the right of the commissioner to adopt supplementary rules regarding voluntary plans. [2019 c 13 s 60; 2017 3rd sp.s. c 5 s 27. Formerly RCW 50A.04.645.]

RCW 50A.30.065 Voluntary plans—Termination by commissioner.

(1) The commissioner may terminate any voluntary plan if the commissioner finds that there is risk that the benefits accrued or that will accrue will not be paid or for other good cause shown.

(2) The commissioner must give notice of the commissioner's intention to terminate a plan to the employer at least ten days before taking any final action. The notice must state the effective date and the reason for the termination.

(3) On the effective date of the termination of a plan by the commissioner, all moneys in the plan, including moneys paid by the employer, moneys paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys, must be remitted to the department and deposited into the family and medical leave insurance account.

(4) The employer may, within ten days from mailing or personal service of the notice, file an appeal in the time, manner, method, and procedure provided in RCW 50A.50.010.

(5) The payment of benefits and the transfer of moneys in the voluntary plan may not be delayed during an employer's appeal of the termination of a voluntary plan.

(6) If an employer's voluntary plan has been terminated by the commissioner the employer is not eligible to apply for approval of another voluntary plan for a period of three years. [2019 c 13 s 61; 2017 3rd sp.s. c 5 s 21. Formerly RCW 50A.04.650.]

RCW 50A.30.070 Employer penalties. (1) An employer of a voluntary plan found to have violated this title shall be assessed the following monetary penalties:

(a) One thousand dollars for the first violation; and

(b) Two thousand dollars for the second and subsequent violations.

(2) The commissioner shall waive collection of the penalty if the employer corrects the violation within thirty days of receiving a notice of the violation and the notice is for a first violation.

(3) The commissioner may waive collection of any penalties if the commissioner determines the violation to be an inadvertent error by the employer.

(4) Monetary penalties collected under this section shall be deposited in the family and medical leave enforcement account.

(5) The department shall enforce the collection of penalties through conference and conciliation.

(6) These penalties may be appealed as provided in RCW 50A.50.010 through 50A.50.200. [2019 c 13 s 62; 2017 3rd sp.s. c 5 s 20. Formerly RCW 50A.04.655.]

RCW 50A.30.075 Appeals. An employer may appeal any adverse decision by the department related to voluntary plans. An employee may appeal any adverse decision by an employer or the employer's agent

related to voluntary plans. Appeals are subject to RCW 50A.50.010.
[2019 c 13 s 63; 2017 3rd sp.s. c 5 s 24. Formerly RCW 50A.04.660.]

RCW 50A.30.080 Voluntary plans—Reports, information, and records. Employers whose employees are participating in an approved voluntary plan must maintain all reports, information, and records as relating to the voluntary plan and claims for six years and furnish for the commissioner upon request. [2017 3rd sp.s. c 5 s 26. Formerly RCW 50A.04.665.]