LEGISLATIVE REPORT

Paid Family & Medical Leave Program Needs and Resources

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Employment Security Department
WASHINGTON STATE

Contact

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Executive Summary

Engrossed Substitute Senate Bill 5187 (Section 225 (3)) requires the Employment Security Department (ESD) to reassess ongoing staffing and funding needs for the Paid Family and Medical Leave (Paid Leave) program and submit documentation of the updated need by September 1, 2023. This report is submitted to meet this requirement and seeks to create understanding about the resources needed to support the program's operations.

Key insights:

- The Paid Leave program has been processing applications and weekly claims for more than three-and-a-half years, providing important benefits to Washington state workers and employers. Paid Family and Medical Leave has distributed over $3.4 billion in leave benefits to over 382,000 Washington employees.

- Paid Leave benefit applications continue to increase. Nearly 40,000 more applications were received in FY23 than in FY22, the most recent year in which there was a substantive increase in operational FTE.

- Processing times for benefits and call center wait times have increased as the volume of applications has increased, despite gaining efficiencies in processing.

- Based on the updated staffing model for this year, the increased application volume results in a need for additional frontline and support staff, including 49 new positions.

- ESD implemented the Paid Leave program focused on delivering benefit payments on schedule. The agency was not able to fully implement every component of the complex law in its initial design work. The program identifies in this report a need for additional resources to support completion of this work, including 48 new positions.

To meet the Department's expectations based on caseload projections and remaining implementation work, ESD will submit two Decision Packages for the 2024 legislative session, as follows:

1. Caseload-driven staffing: 49 additional FTE, requesting additional FTE authority only. Additional funding is not needed for these positions due to a positive variance in the Paid Leave account associated with administrative expenses.

2. Program system completion: 48 additional FTE, requesting $8,291,000 from the Paid Leave account.

Past year experience

Responding to increased demand

The Paid Leave Program continues to grow as more customers utilize this benefit every year. As a new program, Paid Leave also continues to respond to customer demand and policy changes by updating and improving processes and technology. Key changes from the last year include:

- Deployed one of the largest technology releases to date, which improved the initial application and weekly claim experiences for the program's customers. This release included improvements to the weekly claim processes for customers and staff.
- Revised the medical certification forms based on feedback from medical providers. These changes resulted in improvements to staff and customer experience, as well as contributed to efficiency gains in processing.
- Implemented Senate Bill 5649 (2022), which included several changes directly related to benefits: (1) changes to the waiting week, (2) specified that the first six weeks after the birth of a baby is considered medical leave, and (3) allows for leave to be used for seven days following the loss of a child for which you had been bonding with in the first 12 months after birth or would have planned on taking bonding leave for.

Technology improvements

Over the past year the Paid Leave migrated case management system to a cloud-based system, allowing for greater stability of Paid Leave's systems, greater development speed and options, additional support, and reduced downtime. This change allows ESD to access the most current features available in the platform.

Legislative changes

In the 2023 legislative session, three bills pertaining to the Paid Leave program were passed by the Legislature.

- Substitute Senate Bill 5286 makes significant changes to how Washington Paid Family and Medical Leave calculates the annual premium rate paid by employers and employees.
- Substitute House Bill 1570 specifically covers services performed by transportation network company drivers (TNC) and establishes a pilot program to facilitate TNCs

paying for paid family medical leave premiums for TNC drivers who opt-in to the program and is to begin July 1st, 2024.

- Second Substitute Senate Bill 5586 gives employers and third-party administrators access to certain data points regarding an employee's use of Paid Leave.

Customer Care capacity and program growth

The Customer Care Team (CCT) staff process Paid Leave benefits and small business assistance grants while also providing customer service to employees and employers. One of the main performance metrics used for Paid Leave benefits is measuring the time from when an application is submitted to when the first weekly payment is approved, as it reflects the overall customer experience (Graph 1[1]). At the beginning of fiscal year 23, the median remained relatively steady, but as applications increased the median processing time increased. Due to the increase in applications and the longer processing times, phone queue times have increased as well (see Table 1). Since benefits launched in 2020, the agency has committed to process applications within two weeks of submission. With the increases in applications received, the teams are not always able to meet that commitment. As processing time increases, other workload items fall behind, such as electronic messaging inquiries.

Graph 1. Time from submitted application to first approved weekly payment

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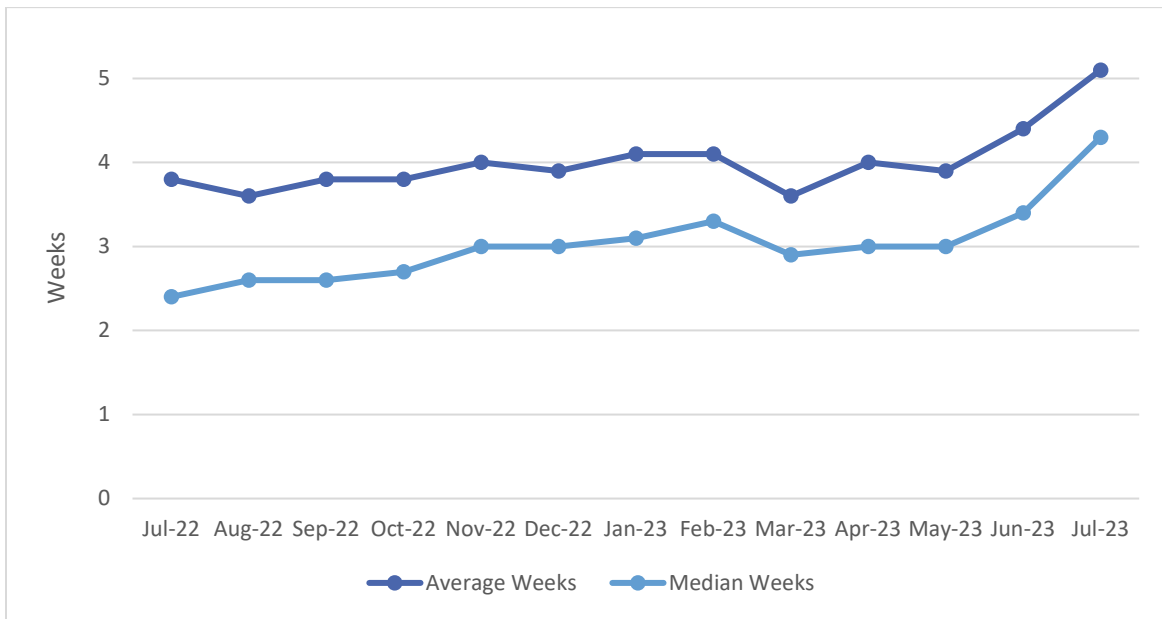
[1] Graph 1 includes two measures of typical time between application submission and first weekly payment approved, for claims approved in their initial determination. *Average Weeks* represents the mean (average) of all applications submitted. The *Median* accounts for outlier cases and provides a more realistic picture of the typical customer experience.

Table 1: PFML average phone queue times by month

Month	Average queue time (mm:ss)
July 2022	12:23
August 2022	09:32
September 2022	08:37
October 2022	09:53
November 2022	10:45
December 2022	10:04
January 2023	09:58
February 2023	11:57
March 2023	05:33
April 2023	07:54
May 2023	14:57
June 2023	23:08
July 2023	31:32

Staffing calculations

As the program continues to evolve and change, Paid Leave learns more about the work that needs to be done and how much time it takes for staff to complete various tasks. In 2021, ESD introduced a staffing model and methodology that uses claim volumes to determine the number of Employment Security Benefits Specialists[2] (ESBS) needed to process applications and claims, along with the work that accompanies those processes.

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[2] Formerly Paid Family and Medical Leave Specialists

Shown in Table 2 are current timings for each leave claim application related task and the ratio of related tasks to one benefit application[3]. The agency combines this information with projected claim application volumes to determine ongoing staffing needs.

Table 2: Current task timing per each initial leave claim application processed

Task	Ratio quantity	Timing (in minutes)	Total staff time (in minutes)
Leave claim application	1	35	35
Phone calls	1.1	15	16.5
Weekly claim	1.4	5	7
Redetermination	0.2	21	4.2
Request for Review	0.2	21	4.2
Electronic inquiry	1.0	7	7
		Total	73.9

Table 3 shows the same data from last year's staffing model. Comparing table 2 to table 3, the time required on benefit claim applications and related tasks has decreased by 5.5 minutes overall for each leave claim application submitted.

Table 3: 2022 task timing per each initial leave claim application processed

Task	Ratio quantity	Timing (in minutes)	Total staff time (in minutes)
Leave claim application	1	35	35
Phone calls	1.3	15	19.5
Weekly claim	3.5	3	10.5
Redetermination	0.2	19	3.8
Request for review	0.2	19	5.7

[3] The ratio quantity represents how many occurrences of each task are anticipated per application. Timing (in minutes) represents the total number of minutes a ESBS spends on a task for a typical application.

Electronic inquiry	0.7	7	4.9
		Total	79.4

Staffing models include available staff time in the methodology. This captures direct service delivery for specialists. This takes into consideration a 40-hour base week, with breaks, sick leave, vacation leave, protected leave (PFML and FMLA), and holidays removed[4]. Time is also allocated for meetings, trainings, and non-processing administrative desk time. The result is that for each ESBS, there are twenty-six (26.1) hours a week available for direct customer service.

Projections and caseload-driven staffing needs

Based on Paid Leave's growth experience to date, the Department expects the volume of incoming leave claim applications to increase to at least 251,592 in FY24. While the Paid Leave program remains in the initial growth period, there is considerable uncertainty around the timing and volumes at which the agency expects to see growth slow as the program moves from this initial growth period into a more mature state. Additional factors include program changes and unique conditions associated with the pandemic.

Using the current staffing models described above, similar in methodology to those established in 2021 and updated with 2023 historical data, ESD expects to need two additional Customer Care Teams and related staff to maintain the current processing times with the increasing workload by the end of FY 2024. With uncertainty around benefit application projections during this initial growth period, it is possible that volumes will grow more than anticipated this year. With no substantial indications of growth slowing, it is unlikely that workloads would grow less than anticipated this year.

In addition to the two teams of ESBS's needed with the staffing model updates, the department also needs an additional Customer Response Team (CRT) to supplement the Leave Program's customer service on phones and electronic messaging to improve our customer experience and better align with the customer and stakeholder expectations.

Additional staff are needed to provide support to the CCT. These positions will provide support for current and additional claim volumes, additional quality control, and training. The positions will also assist with professional and technical writing in support of the Paid Leave program's

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[4] This year ESD improved the staffing model estimates by adding in the protected leave component, which includes when a specialist uses PFML or FMLA leave.

training and communications, manage schedules, workload planning, and operational readiness as the program expands capacity for processing forecasted claim applications.

Additional staffing[5] for Customer Response and Customer Care teams include:

Employment Security Benefits Specialists 2:	24
Employment Security Benefits Specialists 3:	5
Employment Security Benefits Specialists 4:	2
Technical Training Consultant:	1
Customer Service Specialist 2:	11
Customer Service Specialist 3:	1
Customer Service Specialist 4:	1
Management Analyst 3:	1
Management Analyst 4:	3
Total New Staff Request	49

Paid leave remaining implementation work staffing needs

ESD adopted Agile methodologies and delivery methods for the implementation of the Paid Family and Medical Leave program. At its core, Agile is a set of principles and values used to deliver value through short intervals, continuously. Agile projects operate in short phases of work, called Sprints, with frequent product deployments, customer input, reassessments, and adaptations of plans. Agile differs from the more typical Waterfall method, which is a sequential design process that culminates in one large roll-out at the end. The project followed Agile best practices by implementing with a minimum viable product (MVP), prioritizing the most critical features first, and continuing to enhance those features iteratively. This strategy was key to the successful implementation of core components of the law on an aggressive timeline.

A lesson identified in the project's post-implementation report was that implementing technology iteratively requires planning and resourcing capacity to simultaneously operate and improve the system. The Paid Family and Medical Leave project's mandated timeline did not allow for the normalization of business practices between iterations; the implementation team was stabilizing components of the live system while continuing to build additional functionality.

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[5] Current staffing levels per position are provided in Table 4, located in the appendix

While the key milestones of collecting premiums and paying benefits as well as all subsequent legislative changes have been met, there is remaining work to be done to implement key components of the law.

The agency has identified a staffing request associated with completing the remaining balance of work which requires additional resources for our Technology, Transformation and Operations teams to plan, design, build, implement and operationalize the work. The summary of associated projects follows.

Balance of work for full Paid Family and Medical Leave Program implementation

Crossmatching UI and Paid Leave claims

An employee is disqualified from receiving family or medical leave benefits for any week in which the employee is receiving, has received, or will receive compensation from unemployment insurance (UI).

There are currently several manual controls in place to identify customers claiming the same weeks for both programs, including:

- Receiving and working referrals from UI, CCT, and external tips.
- Coordination between UI adjudicators and Paid Leave Compliance teams.
- Generating a weekly report to crossmatch between UI and Paid Leave to identify claims for investigation.

The scope of this project will include migrating existing manual processes into the system and may be broken into phases with different approaches and solutions for different points in a customer's journey (before application, during adjudication/before payment, and after payment).

These phases could be implemented over time rather than all at once, but the program would need to collaborate with partners across the agency to scope and prioritize.

Scope to include:
- Receive data from UI on active claims and automate crossmatch to Paid Leave benefit customers.
  - o Identify and take appropriate action on customers who have active UI claims and have applied for Paid Leave.
    - Provide education to customers, such as targeted email or info in approval letter.

- o Identify and take appropriate action on customers who have active UI claims and Paid Leave weekly claims available to file. Additional analysis needed but could include things like:
  - Preventing Paid Leave weekly claims from being auto approved.
- o Identify and take appropriate action on customers who received UI benefits and Paid Leave benefits for the same week.

Withholding child support obligations from benefits

Under the Paid Family and Medical Leave law, when a benefit applicant is qualified for benefits and has child support obligations, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

Scope to include:
- Crossmatch Paid Leave benefit customers to child support obligations.
  - o Generate file of active benefit customers and send to the Department of Social and Health Services' Division of Child Services (DCS) for crossmatch.
  - o Receive and process withholding advice file from DCS.
- Withhold funds from benefit payments as directed by DCS.
  - o Redirect withholding to DCS.
  - o Pay the difference to benefit customer.
- Notify the benefit customer.
  - o Note withholding on weekly claim history screen.
  - o Record action in customer record for CCT awareness.

Benefit overpayments

Implement a process with the ability to identify, investigate, determine, and receive payment for benefit overpayments. Improvements to existing functionality may be considered enabling work when necessary to reduce manual work or improve the accuracy of the data the program will use to make overpayment determinations.

Enabling work
- Enhancements to benefit application and weekly claims that enable customers and/or staff to change or update information at various points in application and weekly claim life cycles. This could include:
  - o Self-service ability for customers to correct or update details in their claim before it's in review.
  - o Ability for staff to correct or update details during fact finding.
  - o Ability for staff to change the claim year start date, leave type, decisions, etc.

- o Make the system smarter (i.e., use existing system data to improve customer experience and decision making).
- Enhancements to redeterminations to support overpayment implementation.
  - o Improvements to customer initiation flow in portal and case management.
    - Save requests for review in portal for customer reference.
    - Consider going directly to determination (skipping misc. case).
    - Consider adding redetermination portal status.
  - o Add redetermination date to claim history.

Overpayments implementation

- Identify, investigate, and track potential overpayments in case management.
- Make determinations on potential overpayments, including finding of fault.
- Notify benefit recipient of overpayment determinations.
- Develop a waiver process, including waiver criteria, determinations, and case management.
- Receive and properly account for repayments.
  - o Offer payment plans and account accurately.

Penalties & interest (employer)

Project scope to include conference and conciliation prior to assessment of penalties and interest.

Scope includes:

- Develop and implement processes that enable accurate identification of employers subject to reporting and payment requirements.
- Implement automated notifications for employers for key tasks and deadlines.
  - o Generate billing statements.
  - o Automate notifications for wage filing and payments.
- Implement system ability to identify potential non-compliance and generate notifications to employers.
  - o Missing reports.
  - o Balances due.
- Implement the ability for staff to correct employer wage files.
- Manage employer compliance in CRM:
  - o Create cases for employer non-compliance.
  - o Create queues and workflows for employer compliance management.
- Make determinations on employer compliance cases.
  - o Determine applicable penalties.
  - o Apply penalties to accounts.
  - o Apply interest to accounts with an outstanding balance (+90 days).
- Properly account for payments.

- o   Develop process and ability to waive penalties and interest.
- o   Develop ability to offer payment plans.

Crossmatching L&I and Paid Leave benefits

An employee is disqualified from receiving family or medical leave benefits for any week in which the employee is receiving, has received, or will receive compensation under state statue for either permanent total disability compensation (RCW 51.32.060) or temporary total disability (RCW 51.32.090).

County & legislative district reporting

Implement the ability to report to the Legislature on the county and legislative district of benefit customers. This will have no impact to program operations or external customers.

Disqualification, penalties & interest (employee)

An individual is disqualified for benefits for any week where the claimant knowingly and willfully makes a false statement or representation involving a material fact or knowingly and willfully fails to report a material fact and, as a result, has obtained or attempted to obtain any benefits. Under this circumstance, the claimant is disqualified for benefits for the:

- First time: An additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered and is subject to an additional penalty of 15% of the amount of benefits overpaid or deemed overpaid.
- Second time: An additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered and is subject to an additional penalty of 25% of the amount of benefits overpaid or deemed overpaid.
- Third time and any time thereafter: An additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered and is subject to an additional penalty of 50% of the amount of benefits overpaid or deemed overpaid.

Additionally, unrecovered benefit overpayments are subject to a penalty of 1% per month until repaid. All penalties collected must be deposited in the enforcement account.

Elective coverage for tribes

Implement the ability for a federally recognized tribe to elect coverage.

Scope to include:

- Process for a federally recognized tribe to elect coverage.
- Functionality for tribes who have opted-in to report wages and pay premiums quarterly.

Conditional benefit payments

If an employee received one or more benefit payments, is in continued claim status, and there is a question about their eligibility for benefits or their employer contests an aspect of the claim, the department must notify the claimant and allow the claimant to choose whether to continue receiving payments conditionally while the department investigates the eligibility issue.

Collections

If the amount of premiums, interest, or penalties assessed by the Commissioner by order and notice of assessment provided in Title 50A RCW is not paid within ten days after the service or mailing of the order and notice of assessment, the Commissioner or a duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state.

Federal income taxes withholding

Note: The federal Internal Revenue Service (IRS) has thus far declined to provide guidance on the taxability of benefits. The Department aims to have a plan in place and ready to implement once federal guidance is provided.

If the IRS determines that benefits are subject to federal income tax, the department must advise an employee filing a new application for benefits, at the time of filing such application, that:

- The IRS has determined that benefits are subject to federal income tax.
- Requirements exist pertaining to estimated tax payments.
- The employee may elect to have federal income tax deducted and withheld from the employee's payment of benefits at the amount specified in the federal internal revenue code.
- The employee is permitted to change a previously elected withholding status.

Amounts deducted and withheld from benefits must remain in the Family and Medical Leave Insurance Account until transferred to the appropriate federal taxing authority. The program will follow procedures specified by the IRS for deducting and withholding.

The staffing request for this work is as follows[6].

Transformation Team Product Managers (WMS 2)	2
Implementation Support (WMS 1)	1
Operations Process Coordinator (MA3)	1
Transformation Team	
Management Analyst 4	2
Management Analyst 5	1
IT Business Analyst-Journey	2
IT Business Analyst-Senior	2
IT Project Manager-Senior/Specialist	1
Technology Development	
Management Analyst 4	1
IT App Development-Entry	2
IT App Development-Journey	2
IT App Development-Senior/Specialist	4
IT Architecture-Senior/Specialist	1
IT Project Management-Journey	4
IT Project Management-Senior/Specialist	1
IT Quality Assurance-Journey	2
IT Quality Assurance-Senior/Specialist	2
IT System Administration-Journey	12
IT System Administration-Senior/Specialist	3
Total New Staff Request	48

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[6] Current staffing levels per position are provided in Table 5, located in the appendix

Appendix

Table 4: Current Paid Leave Caseload Staffing Summary

Job classification	Current FTE	New FY24	FY24 Total
Employment Security Benefits Specialists 2	217	24	241
Employment Security Benefits Specialist 3	50	5	55
Employment Security Benefits Specialist 4	21	2	23
Technical Training Consultants	5	1	6
Customer Service Specialist 2	32	11	43
Customer Service Specialist 3	4	1	5
Customer Service Specialist 4	3	1	4
Management Analyst 3	8	1	9
Management Analyst 4	3	3	6
Management Analyst 5	1		1
Office Assistant 3	10		10
Office Assistant 3 Lead	1		1
Office Support Supervisor	1		1
Administrative Assistant 3	3		3
Administrative Assistant 4	1		1
WMS 1	14		14
WMS 2	2		2
WMS 3	1		1
EMS 3	1		1
Investigator 3	10		10
Total	388	49	437

Table 5: Current Paid Leave Implementation and Transformation Staffing

Job classification	Current FTE	New FY24	FY24 Total
WMS 2 (Transformation Team Product Managers)	4	2	6
WMS 1 (Implementation Support)	-	1	1
MA 3 (Operations Process Coordinator)	-	1	1
MA 4 (Transformation Team)	6	3	9
MA 5 (Transformation Team)	-	1	1
IT Business Analyst-Journey (Transformation Team)	4	2	6
IT Business Analyst-Senior (Transformation Team)	-	2	2
MA 4 (Tech)	-	1	1
IT App Development-Entry (Tech)	2	2	4
IT App Development-Journey (Tech)	25	2	27
IT App Development-Senior/Specialist (Tech)	5	4	9
IT Architecture-Senior/Specialist (Tech)	4	1	5
IT Project Management-Journey (Tech)	5	4	9
IT Project Management-Senior/Specialist (Tech)	5	1	6
IT Project Management-Senior/Specialist (Transformation)	2	1	3
IT Quality Assurance- Journey (Tech)	18	2	20
IT Quality Assurance- Senior/Specialist (Tech)	6	2	8
IT System Administration-Journey (Tech)	6	12	18
IT System Administration-Senior/Specialist (Tech)	4	3	7
Total	96	47	143