# UNDERSTANDING WASHINGTON'S PAID FAMILY & MEDICAL LEAVE LAW

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# SUMMARY OF THE LAW – THE BASICS

## What is the Paid Family and Medical Leave Law?

- Washington's Paid Family and Medical Leave Program is organized as an insurance program, and like most insurance programs, it is funded through premiums.

- Both employees and employers will contribute premiums together through payroll withholding.

# SUMMARY OF THE LAW – THE BASICS

## Does this replace FMLA leave?

- **NO**. Paid Family and Medical Leave is a statewide insurance program. FMLA is a federal program. In short, this does not replace FMLA.

- Businesses with fewer than 50 employees do not have requirements under FMLA, but they must collect and remit employee premiums and complete required reporting for Paid Family and Medical Leave.

- When an employee experiences a qualifying event, and the event would qualify for both Paid Family and Medical Leave and FMLA, the available leave in both programs decreases together as an employee takes leave.

# SUMMARY OF THE LAW – THE BASICS

## What do the benefits cover?

- When the benefits of Paid Family and Medical Leave become available in 2020, eligible employees will be entitled to take up to 12 weeks (18 weeks in limited special circumstances) of paid leave.
- Washington's law includes partial wage replacement, and your benefits will depend on how much you earn in a typical week.
- This benefit cannot be taken without a qualifying event. Leave can be either Family leave or Medical leave.

# SUMMARY OF THE LAW – THE BASICS

## What is a Qualifying Leave Event?

- Paid Family and Medical Leave cannot be taken without a qualifying leave event. Qualifying leave events can be either **Family** or **Medical**.

- **Family Leave Qualifying Events include**:
  - Care and bond after a baby's birth or the placement of a child younger than 18;
  - Care for a family member experiencing an illness or medical event; or
  - Certain military-connected events.

- **Medical Leave Qualifying Events include**:
  - Care for yourself in relation to an illness or medical event.

# THE LAW TAKES EFFECT JAN. 1, 2019

Premiums begin Jan. 1, 2019

Benefit program begins Jan. 1, 2020

Every employer will have new requirements, regardless of size

# New Requirements for ALL employers:

1. Beginning Jan. 1, 2019, all employers must collect premiums from all employee's wages *differences for CBA, voluntary plan waiver, non-localized work
   - Up to the Social Security wage base
   - Wages do not include tips
2. Beginning Jan. 1, 2019, all employers must report wages and hours to ESD, similar to Unemployment Insurance reporting.
3. Beginning Jan. 1, 2020, all employers must notify employees of the program and their rights under the law.
   - Labor poster
   - Any qualified employee who has been absent for reasons covered under the PFML program for seven consecutive days

# New Requirements for ALL employers:

- If an Employer DID NOT start collecting the employee share of premiums from its employees on January 1, 2019, the Employer can begin withholding the employee share of its premiums at any time, provided that the Employer gives employees notice of the withholding one pay period in advance of making such a withholding from employee paychecks.

- Employers CANNOT retroactively withhold premiums from employees. If an Employer fails to collect the employee share of the premium, it is the Employer that is responsible for paying any missed premiums on the employees' behalf.

# SUMMARY OF THE LAW:

Total cost of the program is .4% of payroll the first 2 years, adjusted annually after.

Two separate funds are established:

Paid Family Leave fund – approximately 1/3 of the cost of the program

- 100% funded by the employee

Funds: Child bonding, ill family member, military exigency

Disability/Medical fund – approximately 2/3 of the cost of the program

- 55% paid by the employer, 45% paid by employee

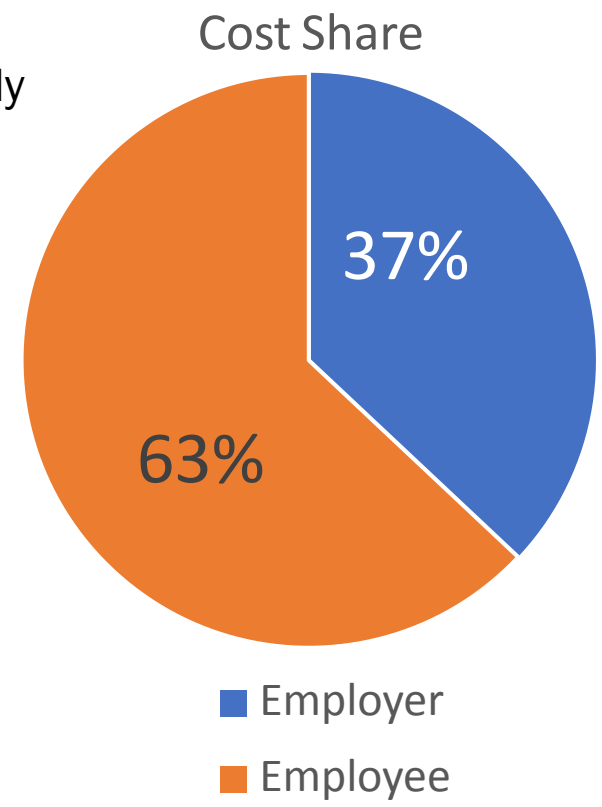
Total employer contribution is 37% (.148% of payroll)

Funds: Employee's disability, including pregnancy

Example: Minimum wage employee - $0.017/hr, 30 hours/week - $0.51/week, $26.52/year

Example: Average wage employee - $0.03/hr, 40 hours/week - $1.20/week, $62.45/year

Example: $1 million annual payroll - $1,480/year



# SUMMARY OF THE LAW – SMALL BUSINESSES EXEMPT, BUT MAY OPT IN

**Businesses with fewer than 50 employees are exempt from paying the employer premium, but may choose to opt in to the program:**

- ESD will determine how many employees you have based on your first quarter reporting (due by July 31, 2019).
- Beginning Sept. 30, 2019, ESD will determine employee count based on the average employee count of the previous four quarters – this will adjust for the seasonal nature of the hospitality industry.
- Self-employed individuals and federally recognized tribes are not required to participate in Paid Family and Medical Leave but may opt in to the program to receive access to benefits.

# SUMMARY OF THE LAW – VOLUNTARY PLANS

**Voluntary Plans are employer-run paid family and/or medical leave insurance programs.**

- Employers can choose to use a Voluntary Plan for family leave, medical leave or both.
- Beginning Jan. 1, 2020, all Washington employers must offer paid family and medical leave whether it's through a Voluntary Plan or the state plan.
- Employers must apply and be approved to operate a Voluntary Plan.
- Applications can be submitted online through ESD's website.

# SUMMARY OF THE LAW – VOLUNTARY PLANS

## Overview of voluntary plan requirements:

- They must meet or exceed state plan benefits.
- They must be approved by the Employment Security Department before they are offered to employees.
- They have unique reporting requirements that are different from state plan reporting requirements.
- They have unique employee eligibility requirements that are different from state plan eligibility requirements.

# SUMMARY OF THE LAW – COLLECTIVE BARGAINING AGREEMENTS

## How do existing collective bargaining agreements figure in?

- Employers and employees subject to collective bargaining agreements (CBAs) that were in existence on or before Oct. 19, 2017, are not subject to the rights or responsibilities of Paid Family and Medical Leave – including the withholding of premiums and the reporting requirements – until the CBA is reopened, renegotiated, or expires.
- Employers do not withhold premiums from these employees or pay the employer share of their premium until the CBA is reopened, renegotiated, or expires.
- Employers and employees covered under CBAs negotiated after Oct. 19, 2017, are in the program and subject to the program's requirements.

# SUMMARY OF THE LAW – COLLECTIVE BARGAINING AGREEMENTS

**What if only specific parts of a CBA have been renegotiated?**

- For the purposes of Paid Family and Medical Leave, only CBAs that have been renegotiated in their entirety meet the definition of reopened, renegotiated or expired.
- A memorandum of understanding (MOU) covering a narrow or specific section of a CBA does not constitute a reopening or renegotiation for the purposes of Paid Family and Medical Leave.
- For example, MOUs to accommodate the new paid sick leave law are not considered a reopening or renegotiation. This includes MOUs to expand the collectively bargained definition of family, accrual rates and reasons for usage under the new paid sick leave law.
- Negotiations of future contracts also do not constitute a reopening or renegotiation.

# SUMMARY OF THE LAW – LOCALIZATION

## What about employees that work for Out-of-state Employers?

- Nearly all employers in the state are required to participate in this program. Out-of-state employers who have employees based in Washington are required to collect premiums and remit on behalf of their Washington employees.

- If an employee primarily works in Washington, and most of their work is performed in Washington, they are covered by Paid Family and Medical Leave. This continues to be true even if they sometimes travel for work out of state.

# SUMMARY OF THE LAW – BUSINESS INCENTIVES

**All employers, small and large, opted-in to the program or not will receive protection from Unemployment Insurance charges due to hiring a temporary employee.**

Businesses with 150 of fewer employees, and businesses with less than 50 employees who have opted in to the program are eligible for:

- $3,000 grant to cover the cost of a temporary employee. Capped at 10 applications per year.
- Up to $1,000 in reimbursement to cover the costs of overtime or retraining if an employee needs to take PFML

Employers who already provide comparable benefits may seek a waiver if they choose to continue their own plans (Voluntary Plan Waiver)

# SUMMARY OF THE LAW– ELIGIBLE EMPLOYEES

To qualify for Paid Family and Medical Leave, you must work 820 hours or more in the qualifying period.

The qualifying period is either:

- The first four of the last five completed calendar quarters; or
- The last four completed calendar quarters.

820 hours = 5 months at full time, 15 hours/week for the full year

Employees who work for an employer with fewer than 50 employees are covered and pay into the fund, however, the employer is not required to pay their share of the premium.

# SUMMARY OF THE LAW – QUALIFYING EVENTS

**Eligible employees may take leave if they have a qualifying event that is MEDICALLY CERTIFIED:**

***Family Leave*:**

- Birth, adoption, placement of a child (either parent)
- Serious illness of a family member, requires treatment or care
  - Parent, Parent-in-law
  - Grandparent
  - Spouse
  - Sibling
  - Child
  - Grandchild
- Military Exigency

***Medical/Disability Leave*:**

- Employee's personal and serious medical issue or disability.
- Includes recovering from child birth or pregnancy related complications.

# SUMMARY OF THE LAW – LENGTH OF BENEFIT

**Employees who are eligible (worked at least 820 hours in the workforce in 4/5 last quarters) may access paid leave for qualifying events:**

- 12 weeks for family care
- 12 weeks for personal medical/disability + 2 weeks if there's a complication related to pregnancy
- Capped at a total 16 weeks per 12 month period
- A person who experiences disability related to pregnancy is eligible to take 14 weeks of medical leave, for a total of 18 weeks per 12 month period

We will walk through how this works in the examples that follow.

# SUMMARY OF THE LAW– EMPLOYER REQUIREMENTS

## Job Retention benefit:

- While all qualified employees are eligible to take leave, the employer does not have any new requirements regarding the employee.

## FMLA alignment, employers with > 50 employees:

- If the employee and employer meet the requirements under FMLA, (employee has worked with that employer for 1250 hours in the last 12 months, employer has 50 or more employees), they continue to have the same requirements.
- Must reserve the position and continue health care benefits while FMLA covered employee is out.

# SUMMARY OF THE LAW – WAGE REPLACEMENT

Qualified Employees who take PFML are entitled to a portion of their wages, calculated:

- 90% of wages up to 50% of the state's average weekly wage (AWW) ($1,190,or$61887/yr)
  - Employees making $595/week or less (not including tips) will receive 90% of wages
- Then, 50% of wages beyond the first calculation
- No one will receive more than 90% of the AWW,($1,000)

Example: Employee makes $60,000/year or $1,153.84/week

- 50% of the AWW is = $595, they receive 90% = $535.50
- Plus, 50% of the rest of her wages, $1,153.84 – 595 = $558.84, $558.84 x 50% = $279.42
- $535 + $279.42 = $814.42, 70% of her wages

- Employees who make more than $79,248/year will be capped at $1,000.

# RECENT CHANGES TO THE LAW – WAGE REPLACEMENT

**A bill to provide updates to Washington's new Paid Family and Medical Leave program was signed into law by Gov. Jay Inslee in April of 2019.**

- House Bill 1399 makes several technical corrections to the new program, and clarifies a key provision related to supplementing wages while an employee is out on leave.
- Under the original law, employers would not be allowed to supplement the pay of an employee out on Paid Family and Medical Leave with other forms of paid leave, including vacation or sick leave. HB 1399 changes this, essentially allowing an employee the option to top-off their Paid Family and Medical Leave benefit with company provided paid leave. This is in alignment with other states' policies and was supported by stakeholders representing the interests of both employers and employees.
- The bill also makes some technical corrections to the law, including clarifications related to employer-run voluntary plans, appeal rights for employees covered by a voluntary plan, disclosure and privacy provisions, and some definitions within the law.

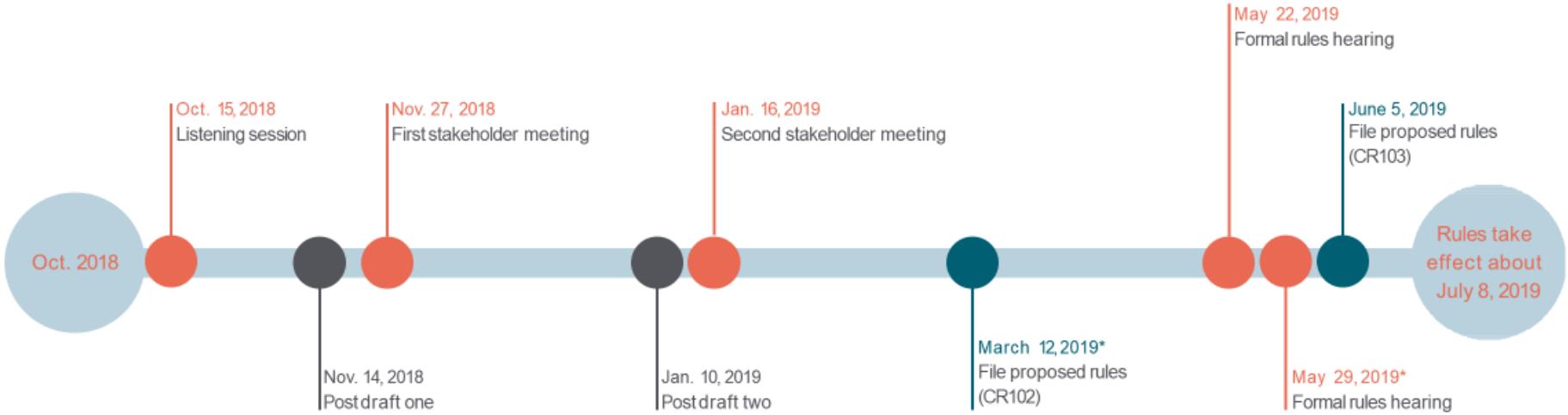
# PAID FAMILY & MEDICAL LEAVE VS. PAID SICK & SAFE LEAVE

| | Paid Family & Medical Leave | Paid Sick & Safe Leave |
|---|---|---|
| **Agency:** | Employment Security Department | Dept. of Labor & Industries |
| **Who pays for leave:** | Insurance program, paid for by employees (63%) and employers (37%) | 100% employer |
| **Who determines eligibility:** | Medical certification, ESD | Employee<br>Employer may request verification after 3 days |
| **Length of leave:** | 12 weeks, capped at 14, limited circumstances 18 weeks | 1 hour for every 40 hours worked, may roll over up to 40 hours to next year |
| **Amount:** | Up to 90% of wage, capped at $1,000/week. | 100% of wage |
| **Use:** | Birth/placement of child, employee medical issue, family member medical issue, military leave | Health need of employee or family, preventative health need, when work or child's school has been closed, domestic violence |

Washington
**Paid Family & Medical Leave**

# Phase four rulemaking timeline

Continuation of benefits • Fraud



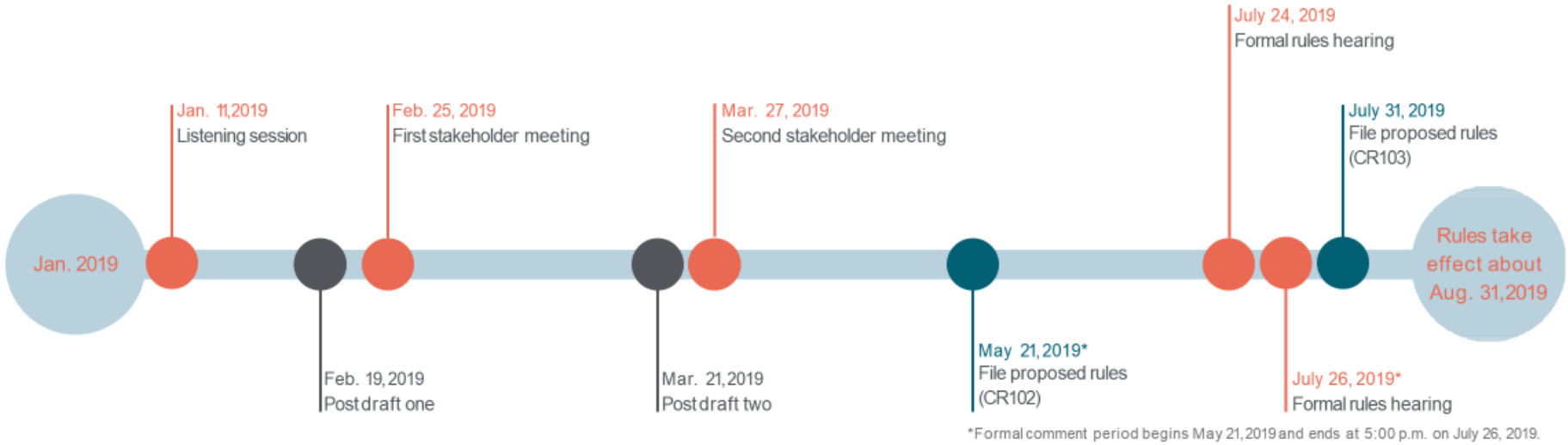

*Formal comment period begins March 12, 2019 and ends at 5:00 p.m. on May 29, 2019.

*This timeline is an approximate timeframe for phase four of the Paid Family and Medical Leave rulemaking process. Dates are subject to change.*

Washington
**Paid Family & Medical Leave**

# Phase five rulemaking timeline

Job protection • Benefit over-payments • Miscellaneous




*Formal comment period begins May 21, 2019 and ends at 5:00 p.m. on July 26, 2019.

*This timeline is an approximate timeframe for phase five of the Paid Family and Medical Leave rulemaking process. Dates are subject to change.*

# HOW DOES THE PROGRAM WORK?

# EXAMPLE: SMALL BUSINESS, HAS NOT OPTED IN TO THE PROGRAM

Jane is a qualified employee, paid her portion of PFML via a payroll tax collected by her employer and remitted to ESD. Her employer has not opted in to the program.

A qualifying event occurs. Jane is able to take 12 weeks of PFML to pay her bills while she recovers. She receives a check from ESD every week.

Employer hires a new employee to replace Jane, who is unable to work.

# EXAMPLE: SMALL BUSINESS, OPTED-IN TO THE PROGRAM

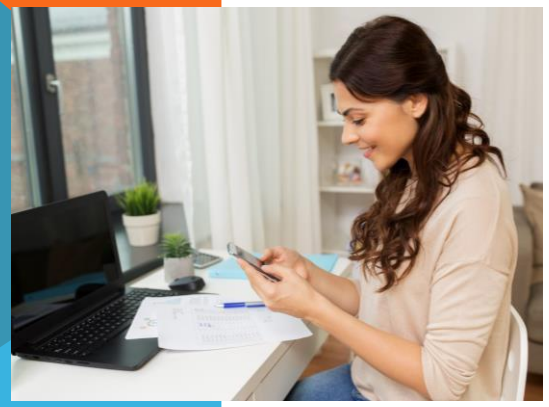
June is a qualified employee and has paid her portion of PFML via a payroll tax collected by her employer and remitted to ESD. The employer paid the employer premium.

A qualifying event occurs.

June is able to take 12 weeks of PFML to pay her bills while she recovers. She receives a check from ESD every week.

Employer gets $3,000 to cover costs of hiring a temporary worker while June is gone.
June returns when she is healthy.

# EXAMPLE: BUSINESS WITH 200+ EMPLOYEES



Maria works 40 hours per week for 14 months. She has paid her portion of PFML via a payroll tax collected by her employer and remitted to ESD. The employer has also paid their employer premiums.

Maria notifies her employer 30+ days before planning to give birth.

Qualifying event: Pregnancy disability and birth of a child.

Maria files the claim with ESD. She has 6 weeks of her medical leave. The baby is born and she takes 12 more weeks of family leave to bond with child for a total of 18 weeks.

Employer hires a temporary worker and lays off the temporary worker when Maria returns. Employer is not charged for temp worker's UI experience.

# EXAMPLE: BUSINESS WITH 200+ EMPLOYEES

John worked 820+ hours and has paid his share of PFML with other employers.

A qualifying event occurs on John's 2nd day of work with his new employer. His employer has also paid on 2 days worth of wages for John. John is not able to work.

John gets 12 weeks of paid family leave to help his spouse recover.

The employer is not obligated to hold position and they hire a new employee.

# VOLUNTARY PLAN WAIVER

**IF THE EMPLOYER ALREADY OFFERS A PAID FAMILY AND MEDICAL LEAVE BENEFIT PACKAGE, OR IF THE EMPLOYER WANTS TO CREATE ITS OWN BENEFIT PACKAGE AND RECIEVE A WAIVER FROM SOME STATE REQUIREMENTS, THIS MAY BE AN OPTION TO CONSIDER**

Voluntary Plans may apply for a waiver from:

- The Family Leave fund (100% paid by employee)
- The Medical Leave fund (55% paid by employer)
- Or both

Voluntary Plans may use a third party to administer.

- For example, the employer may already have a temporary disability program that meets the requirements of the medical leave program. The insurance provider may administer the program

Voluntary plans must meet or exceed the state plan offerings and have a higher standard for employers.

# VOLUNTARY PLAN WAIVER - REQUIREMENTS

| | Voluntary Plan | State Plan |
|---|---|---|
| **Job Retention Requirement:** | 9 months, 965 hours | 12 months, 1,250 hours |
| **Hours threshold for eligibility:** | 340 hours | 820 hours |
| **Protected leave:** | 12 weeks/12 weeks or 18 weeks | 12 weeks/12 weeks or 18 weeks |
| **Paid leave:** | 6 weeks/6weeks or 9 weeks | 12 weeks/12 weeks or 18 weeks |
| **Benefit amount:** | Regardless of amount of time taken, must equal the amount the employee is eligible for on state plan | Up to $1,000/week |

Voluntary plans may be more desirable for employees because they could provide for a greater amount of salary replacement while gone from work. Voluntary plans may be more desirable to employers because they may allow incentive for employees to return to work faster.

# EXAMPLE: BUSINESS WITH A VOLUNTARY PROGRAM WAIVER

Sean works 40 hours per week for 10 months. He has paid his share of PFML through his employer. The employer already provides short term disability insurance and has been waived from the state program.

Qualifying event and Sean is not able to work.

Sean receives 100% of his salary while he is gone which is equal to more than what he would have received through state program, but his employer only provides 7 weeks of leave.

Sean still needs one more week, and he has earned 40 hours of PSSL under I-1433, so he uses this to cover the last week of leave.

# QUESTIONS?