

Chapter 50A.35 RCW
EMPLOYMENT PROTECTIONS

Sections

50A.35.010 Employment protection.
50A.35.020 Continuation of health benefits.
50A.35.030 Employer supplementation—Rights not subject to waiver or
diminishment.

RCW 50A.35.010 Employment protection. (Effective until January 1, 2026.) (1) Except as provided in RCW 50A.30.010(5) and subsection (6) of this section, any employee who takes family or medical leave under this title is entitled, on return from the leave:

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

(b) To be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

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

(3) Nothing in this section shall be construed to entitle any restored employee to:

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

(b) 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.

(4) As a condition of restoration under subsection (1) of this section for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work.

(5) Nothing in this section shall be construed to prohibit 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.

(6)(a) This section does not apply unless the employee: (i) Works for an employer with fifty or more employees; (ii) has been employed by the current employer for twelve months or more; and (iii) has worked for the current employer for at least one thousand two hundred fifty hours during the twelve months immediately preceding the date on which leave will commence. For the purposes of this subsection, an employer shall be considered to employ fifty or more employees if the employer employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year.

(b) An employer may deny restoration under 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:

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

(ii) 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

(iii) The leave has commenced and the employee elects not to return to employment after receiving the notice. [2019 c 13 s 4; 2017 3rd sp.s. c 5 s 31. Formerly RCW 50A.04.025.]

RCW 50A.35.010 Employment protection. (Effective January 1, 2026.) (1) (a) Except as provided in RCW 50A.30.010(5) and subsections (6) and (7) of this section, an employee is entitled to employment restoration upon returning from:

(i) Family or medical leave under this title, regardless of whether the employee also qualifies for and receives concurrent leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026), as provided under RCW 50A.15.110; or

(ii) Unpaid leave protected by the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026), during a period in which the employee was eligible for benefits under this title but did not apply for and receive those benefits, excluding unpaid sick leave or temporary disability taken for pregnancy or childbirth under chapter 49.60 RCW or as an accommodation under *RCW 43.10.005, subject to the notice requirements in subsection (8) of this section.

(b) For purposes of this section, "employment restoration" and "employment protection" mean that the employee 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 by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

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

(3) Nothing in this section shall be construed to entitle any restored employee to:

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

(b) 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.

(4) As a condition of restoration under subsection (1) of this section for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work.

(5) Nothing in this section shall be construed to prohibit 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.

(6) (a) This section does not apply unless the employee:

(i) Works for an employer with the following number of employees:

(A) 25 or more employees beginning January 1, 2026, until December 31, 2026;

(B) 15 or more employees beginning January 1, 2027, until December 31, 2027; and

(C) Eight or more employees beginning January 1, 2028, and thereafter; and

(ii) Began employment with the current employer at least 180 calendar days before taking the leave.

(b) An employer may deny restoration under this section to any salaried employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed if:

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

(ii) 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

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

(7)(a) Except by written agreement between the employer and employee or between the employer and an employee bargaining unit, the employee forfeits the right to employment restoration under this section if the employee does not exercise it upon the earlier of:

(i) The first scheduled work day following the period of leave under subsection (1)(a) of this section; or

(ii) The first scheduled work day following a continuous period of, or combined intermittent periods of a total of, 16 typical workweeks of leave under subsection (1)(a) of this section taken during a period of 52 consecutive calendar weeks, except this period is extended to 18 typical workweeks of leave under subsection (1)(a) of this section taken during a period of 52 consecutive calendar weeks if any of the leave was taken as a result of a serious health condition with a pregnancy resulting in incapacity.

(b) For any continuous period of leave exceeding two typical workweeks or any combined intermittent periods of leave exceeding 14 typical work days, the employer must provide at least five business days advance written notice to the employee, in a language understood by the employee and transmitted by a method reasonably certain to be received promptly by the employee, regarding the estimated expiration of the right of employment restoration and the date of the employee's first scheduled work day under this subsection. For combined intermittent periods of leave, the employer may estimate the expiration of the right of employment restoration based on information provided to the employer by the department and employee.

(c) The expiration of the periods under (a)(ii) of this subsection does not affect an employee's eligibility for paid family and medical leave benefits under this title.

(8)(a) In order for unpaid leave under subsection (1)(a)(ii) of this section to qualify for employment restoration rights under this section and count towards the maximum periods in subsection (7)(a)(ii) of this section, the employer must provide written notice to the employee, in a language understood by the employee and transmitted by a method reasonably certain to be received promptly by the employee, of the following:

(i) That the employer is designating and counting the employee's unpaid leave against the employee's entitlement under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026), including specifying

the amount of the entitlement used and remaining, as estimated by the employer based on information provided by the department and employee;

(ii) The start and end dates of the employer's designated 12-month leave year under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026);

(iii) Since the employee is eligible for paid family or medical leave under this title but is not applying for and receiving benefits, that the employer is counting the unpaid leave towards the maximum periods in subsection (7)(a)(ii) of this section, including specifying the start and end dates of the unpaid leave, and the total amount of the unpaid leave counting toward those maximum periods, as estimated by the employer based on information provided by the department and employee; and

(iv) That the use of unpaid leave counting against the periods in subsection (7)(a)(ii) of this section does not affect the employee's eligibility for paid family or medical leave benefits under this title.

(b) The employer must provide the written notice required by this subsection:

(i) Within five business days of the earlier of either the employee's initial request for or use of unpaid leave protected by the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026); and

(ii) At least monthly for the remainder of the employer's designated 12-month leave year.

(9) For purposes of auditing compliance or otherwise enforcing this chapter, the department may require the employer to collect and report information on the exercise of employment restoration rights under this section.

(10) This section does not alter or limit the rights and protections available to employees under other state or federal laws, including but not limited to sick leave or temporary disability taken for pregnancy or childbirth under chapter 49.60 RCW or as an accommodation under *RCW 43.10.005, sick leave taken under RCW 49.46.210, or leave protected by the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026). [2025 c 304 s 11; 2019 c 13 s 4; 2017 3rd sp.s. c 5 s 31. Formerly RCW 50A.04.025.]

***Reviser's note:** RCW 43.10.005 was repealed by 2025 c 379 s 8, effective January 1, 2027.

Effective date—2025 c 304: See note following RCW 50A.05.020.

RCW 50A.35.020 Continuation of health benefits. (Effective until January 1, 2026.) If required by the federal family and medical leave act, as it existed on October 19, 2017, during any period of family or medical leave taken under this title, the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date the employee commenced family or medical leave until the date the employee returns to employment. If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost. This section does not apply to an employee who is not in employment for an employer at the time of

filing an application for benefits. [2019 c 13 s 39; 2017 3rd sp.s. c 5 s 70. Formerly RCW 50A.04.245.]

RCW 50A.35.020 Continuation of health benefits. (Effective January 1, 2026.) (1) Except as provided under subsection (2) of this section, during any period of family or medical leave taken under this title, the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date the employee commenced family or medical leave until the date the employee returns to employment. If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost.

(2) This section does not apply if:

(a) An employee is not employed by the employer at the time of filing an application for benefits;

(b) An employee is not entitled to employment protection under RCW 50A.35.010; or

(c) The employee did not exercise the right to employment protection within the time periods provided under RCW 50A.35.010(7). [2025 c 304 s 12; 2019 c 13 s 39; 2017 3rd sp.s. c 5 s 70. Formerly RCW 50A.04.245.]

Effective date—2025 c 304: See note following RCW 50A.05.020.

RCW 50A.35.030 Employer supplementation—Rights not subject to waiver or diminishment. (1) Nothing in this title shall be construed to discourage employers from:

(a) Adopting or retaining leave policies more generous than any policies that comply with the requirements under this title; or

(b) Making supplemental benefit payments as provided under RCW 50A.15.060 to an employee on paid family or medical leave.

(2) Any agreement by an individual to waive, release, or commute his or her rights under this title is void as against public policy.

(3) After January 1, 2020, subject to *RCW 50A.05.090, an employee's rights under this title may not be diminished by a collective bargaining agreement or employer policy. [2019 c 13 s 42; 2017 3rd sp.s. c 5 s 78. Formerly RCW 50A.04.260.]

***Reviser's note:** RCW 50A.05.090 expired December 31, 2023.