

WASHINGTON COVID-19 FOOD PRODUCTION WORKERS PAID LEAVE PROGRAM – GUIDE FOR EMPLOYERS

On August 13, 2020, Governor Inslee issued Proclamation 20-67, “Food Production Workers Paid Leave.” The proclamation *requires* certain food production employers to pay leave (paid leave) for workers who may or do have a positive COVID-19 diagnosis. This document sets out the conditions for employers to be eligible for reimbursement for expenditures under Proclamation 20-67.

TIMELINE

August 18, 2020	<p><u>Commencement of Leave Window</u> Covered Workers, as defined in Proclamation 20-67, are eligible to receive paid leave.</p>
September 7, 2020	<p><u>Initial Application with Department of Commerce</u> Employers provide the Department of Commerce with their initial application. The application identifies the following:</p> <ul style="list-style-type: none">a) Business name, business address, owner or registered agent, UBI number, and nature of business;b) Expected peak number of employees during the leave window;c) Description of plan to effectively implement the leave program, including obtaining and retaining all supporting documentation.
September 30, 2020	<p><u>First Report Due</u></p> <p>Employers provide the Department of Commerce with an initial report identifying the total number of workers who received paid leave and the total amount paid as of September 16, 2020.</p> <p>No personally identifiable information shall be included in this report.</p>
October 30, 2020	<p><u>Second Report Due</u> Employers provide the Department of Commerce with a second report identifying the total number of workers who received paid leave and the total amount paid between September 17, 2020, and October 16, 2020.</p> <p>No personally identifiable information shall be included in this report.</p>
November 13, 2020	<p><u>Conclusion of Leave Window</u></p>

No paid leave remitted after November 13, 2020, is eligible for reimbursement.

November 30, 2020 Reimbursement Request Due

The reimbursement request will include a full accounting of all leave paid under this program, including the number of workers taking leave, the total hours paid at the rate of \$430 per 40 hours, i.e., \$10.75 per hour, and the total eligible expenditures under this program.

December 2020 Reimbursements Processed

DETERMINING ELIGIBILITY, CALCULATING LEAVE, AND PAYING LEAVE

Determining Eligibility

By September 14, 2020, or within seven (7) days of beginning an isolation or quarantine, whichever is later, workers must provide employers information sufficient to establish that they meet the criteria set forth under the “Qualifying Events” section of Proclamation 20-67. The Department of Commerce includes on its webpage a link to a sample leave request form.

Filled and returned forms from workers must be kept in the employer’s records for six (6) years to comply with federal auditing requirements. *The forms are not to be submitted with any application or reimbursement request to the Department of Commerce.*

Calculating Leave

Full-time workers are eligible for up to 80 hours of leave, equal to \$860, or \$10.75 per hour lost. The leave is only available for the duration of the worker’s time spent away from work.

Example 1: Alex works 40 hours per week and is diagnosed with COVID-19 on the evening of Friday, August 7th. Per the local health official, Alex must isolate for 10 days. He returns to work on Tuesday, August 18th, having missed six full days of work.

Alex’s paid leave is \$516. (48hrs * \$10.75)

Example 2: Adrianna works a variable schedule. Before getting ill and isolating for 13 days, Adrianna worked 30 hours in the previous week and 40 hours the week before, including some work on Saturdays and Sundays.

Adrianna’s paid leave is \$698.75. (70hrs/14 = 5hrs per day average; 5hrs * 13 days lost = 65hrs; 65hrs * \$10.75 = \$698.75)

Example 3: Jeffery works 50 hours per week and is ordered to isolate for 14 days. He misses a full ten days of work, equivalent to 100 hours.

Jeffery's paid leave is \$860.

Paying Leave

Leave must be included within one pay period of the worker's return to work.

Tax Reporting and Withholding

Washington State cannot provide definitive advice regarding federal reporting and withholding obligations of employers under this program. However, the Washington COVID-19 leave program closely resembles the Families First Coronavirus Response Act (FFCRA), and therefore, employers should expect to have similar reporting and withholding obligations.

IRS publications generally confirm that sick leave is subject to taxation and withholding, and this also applies to FFCRA payments, as noted [here](#). Additional information about the treatment of sick leave at the federal level is found [here](#) (IRS Publication 15-A, section 6).

Any questions about federal obligations should be directed to independent counsel.

RECORDKEEPING

In order to receive a reimbursement following the conclusion of the paid leave window, employers must maintain records sufficient to establish that leave was actually paid. Records must include:

- a) Worker paid leave request forms;
- b) Payroll statements for workers taking paid leave; and
- c) Bank account statements showing amounts paid to workers taking paid leave.

These records are not to be submitted with the Initial Application, the First Report, the Second Report, or the Reimbursement Request. However, they must be made available upon demand by the Department of Commerce or any other individual or entity acting on behalf of the Department of Commerce. Records must be kept for auditing purposes for six (6) years under federal law.

FREQUENTLY ASKED QUESTIONS FOR EMPLOYERS

Q. I am having workers quarantine prior to commencing their duties with me. Are they eligible for paid leave under this program?

A. No. An employer that quarantines workers is not required to pay leave under Proclamation 20-67. Similarly, the employer is not eligible for any reimbursement for amounts paid prior to the commencement of duties.

Q. Some of the workers at my business already have leave under a different program. How is that handled for purposes of this program?

A. The worker must exhaust all other banked leave before becoming eligible for this program.

Q. I am a Covered Employer, which of my employees are covered by this program?

A. Only those who are providing direct labor to produce food, i.e., workers engaged in picking, harvesting, tending, pruning, packing, processing, etc.