

TITLE 18. LABOR AND EMPLOYMENT

Chapter 18.2

FAMILY MEDICAL LEAVE

Sections:

18.2.1	Title.
18.2.2	Findings.
18.2.3	Purpose.
18.2.4	Definitions.
18.2.5	Family Medical Leave Requirement.
18.2.6	Employee Benefits Protection.
18.2.7	Effect on Existing Employee Benefits.
18.2.8	Construction of Rights in Accordance with Federal Law.
18.2.9	No Consent to Applicability of Federal Law or Waiver of Sovereign Immunity.
18.2.10	Prohibited Acts.
18.2.11	Enforcement.

18.2.1. Title. This chapter is the “Suquamish Tribe Family Medical Leave Ordinance.” (Res. 2016-163, passed Oct. 3, 2016)

18.2.2. Findings. The Suquamish Tribal Council finds, as a matter of tribal public policy, the following:

(a) The Tribe has a primary interest in exercising its inherent sovereign authority to provide for a fair and productive working environment for employers and employees within the territorial jurisdiction of the Suquamish Tribe of the Port Madison Indian Reservation.

(b) As a sovereign government, the Suquamish Tribal Council finds that it is in its own best interests to govern employment relations within its territorial jurisdiction to ensure fair and productive working environments, and, to that end, to provide job security, in accordance with the unique public policy values of the Tribe, for those employees who must take time off from work as a result of their own serious health condition, to care for a family member with a serious health condition, for the birth or adoption of a child, or to care for a covered service member.

(c) The Tribe wishes to set forth the terms and conditions for such leave for such employees to ensure fair and productive working environments within its jurisdiction.

(d) The Tribe exercises its inherent sovereign authority to address family medical leave for employees in a manner that is effective and efficient and, to that end, as far as the legal standards of other jurisdictions correspond with the Tribe’s public policy values, and without in any way compromising its own inherent sovereign authority, the

Tribe may choose to adopt the standards of other jurisdictions, as the law of the Tribe. (Res. 2016-163, passed Oct. 3, 2016)

18.2.3. Purpose. The purpose of this chapter is to establish employees' legal rights to family medical leave in accordance with the Tribe's public policy values. (Res. 2016-163, passed Oct. 3, 2016)

18.2.4. Definitions. Unless otherwise provided in this chapter, or context shows otherwise, the definitions of subsections 18.1.4(a), (d), (e), and (f) are incorporated in this chapter. (Res. 2016-163, passed Oct. 3, 2016)

18.2.5. Family Medical Leave Requirement. Eligible employees are generally entitled to up to twelve (12) work weeks of unpaid family medical leave in the 12-month period the employer designates. An eligible employee is an employee of a covered employer who: (1) Has been in the employer's employ for at least twelve (12) months, and (2) has been employed for at least one thousand two hundred fifty (1,250) hours of service during the 12-month period immediately before the leave begins, and (3) is employed at a worksite where the employer employs fifty (50) or more employees within seventy-five (75) miles of that worksite. Nothing in this section prevents an employer from setting eligibility criteria that are less strict than those this section provides.

The following conditions apply to family medical leave granted under this section:

(a) The employee must give at least thirty (30) days' written notice of the intended date upon which family medical leave will begin and end, unless medical emergency prevents from giving that notice; or as soon as practicable under the circumstances if thirty (30) days' notice is not possible.

(b) The employer may require medical certification from a health care provider or other documentation to support the need for leave.

Family medical leave granted under this section is unpaid leave unless the employee is otherwise eligible for paid leave under employer policies, disability insurance, or workers' compensation. If the employee is eligible for paid leave for part of the leave time granted by this section, any remaining leave time will be unpaid. An eligible employee may elect, or an employer may require the employee, to use accrued paid vacation leave, personal leave, sick leave, or family leave concurrently with leave provided under this section unless the employee is receiving pay through workers' compensation or disability insurance. (Res. 2016-163, passed Oct. 3, 2016)

18.2.6. Employee Benefits Protection. (a) Restoration. Any employee who exercises the right to family medical leave under this section, upon expiration of the leave, is entitled to be restored by the employer to the position the employee held when the leave began or to an equivalent position with equivalent employee benefits, pay and other terms and conditions of employment, provided that an employee who would not

be entitled to continue employment without having taken family medical leave is not entitled to such restoration.

(b) Maintenance of Employee Benefits. During any family medical leave taken under this chapter, the employer will maintain health insurance coverage at the level and under the conditions coverage would have been provided if the employee had continued in employment, provided that the employee will still be required to pay his or her portion of the health insurance premiums as applicable under the employer's policy. If the employee does not return to work after taking family medical leave under this chapter, the employee may be required to pay the employer for the cost of health insurance the employer incurred while the employee was on such leave if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, a covered service member's serious injury or illness, or another reason beyond the employee's control.

(c) Exceptions. An employee has no greater right to restored employment or to other benefits or conditions of employment under this section than if the employee had been continuously employed during the leave time taken. The employer has the burden to show that the employee would not otherwise have been employed or entitled to the benefits at the time reinstatement is requested in order to deny that reinstatement.

(d) Certification. As a condition of restoration to employment, the employer may require the employee to provide health care provider certification that the employee is able to resume work and safely perform his or her job functions. Nothing in this chapter prohibits 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. (Res. 2016-163, passed Oct. 3, 2016)

18.2.7. Effect on Existing Employee Benefits. (a) Benefit accrual. Taking family medical leave under this section will not result in the loss of any employee benefit accrued before the date on which the leave began. With the exception of health insurance benefits, the accrual of other benefits during any unpaid leave period will be governed by the employer policies and practices applicable to employees on other similar unpaid leaves of absence.

(b) Limitations. Nothing in this chapter entitles any restored employee to the accrual of any seniority or employment benefits during any period of leave or to 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. (Res. 2016-163, passed Oct. 3, 2016)

18.2.8. Construction of Rights in Accordance with Federal Law. In the exercise of its inherent sovereign authority and without in any way compromising its sovereign authority to determine the standards and conditions under which family medical leave may be granted and protected within the Tribe's territorial jurisdiction, until such time as the Tribe may choose to enact further or amended provisions of this chapter,

employees' rights and benefits to family medical leave under this chapter should be construed in accordance with the federal Family Medical Leave Act (FMLA), *provided, however, that* if there is any conflict between the terms of this chapter, other provisions of this code, or other provisions of the Suquamish Tribal Code and the FMLA, the law of the Tribe controls. (Res. 2016-163, passed Oct. 3, 2016)

18.2.9. No Consent to Applicability of Federal Law or Waiver of Sovereign Immunity. The Tribe's decision to construe rights and benefits under this chapter in accordance with the FMLA as provided in section 18.2.8 will not be construed as a consent to the application of the FMLA to the Tribe or to any employer or as any waiver of sovereign immunity from suit. (Res. 2016-163, passed Oct. 3, 2016)

18.2.10. Prohibited Acts. (a) Unlawful interference or denial of rights. An employer may not interfere with, restrain or deny the lawful exercise of or the attempt to exercise any right this chapter provides.

(b) Unlawful discrimination against exercise of rights. An employer may not discriminate against any employee for lawfully exercising any right this chapter provides.

(c) Unlawful discrimination against opposition. An employer may not discriminate against any employee for lawfully opposing any practice this chapter makes unlawful. (Res. 2016-163, passed Oct. 3, 2016)

18.2.11. Enforcement. Violations of this chapter may be enforced according to chapter 18.4. (Res. 2016-163, passed Oct. 3, 2016)