

HOUSE BILL REPORT

ESHB 1471

*As Passed House
March 18, 1991*

Title: An act relating to "foundation for families act".

Brief Description: Creating the "foundation for families act of 1991."

Sponsor(s): By House Committee on Commerce & Labor (originally sponsored by Representatives Heavey, Prentice, Jacobsen, Franklin, Ogden, Orr, Winsley, R. King, Jones, Wineberry, Leonard, G. Fisher, Nelson, O'Brien, Cole, Sprenkle, Pruitt, Brekke, Morris, R. Johnson, Cantwell, Spanel, Ebersole, Wang, Phillips, Basich, Valle, Haugen, Scott, Cooper, Roland, Rust and Anderson).

Brief History:

Reported by House Committee on:
Commerce & Labor, February 14, 1991, DPS;
Appropriations, March 9, 1991, DPS(CL)-A;
Passed House, March 18, 1991, 55-43.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1471 be substituted therefor, and the substitute bill do pass.*
Signed by 7 members: Representatives Heavey, Chair; Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; and Prentice.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass.*
Signed by 18 members: Representatives Locke, Chair; Inslee, Vice Chair; Spanel, Vice Chair; Appelwick; Belcher;

Braddock; Brekke; Dorn; Ebersole; Hine; Peery; Pruitt; Rust; H. Sommers; Sprenkle; Valle; Wang; and Wineberry.

Minority Report: *Do not pass.* Signed by 11 members: Representatives Silver, Ranking Minority Member; Morton, Assistant Ranking Minority Member; Bowman; Ferguson; Fuhrman; Lisk; May; McLean; Mielke; Nealey; and Vance.

Staff: Wayne Kawakami (786-7384).

Background:

Family leave

In 1989, the Legislature enacted family leave legislation. The legislation requires employers employing 100 or more to grant an employee family leave to care for a newborn or newly adopted child under six, or to care for a terminally ill child under 18. The provisions limit family leave to 12 weeks during any 24 month period. On return from family leave, the employee has a right to reinstatement to the employee's same position, an equivalent position, or any vacant position. If both parents are employed by the same employer, the employees together are limited to a total of 12 weeks of family leave. Anti-discrimination provisions prohibit discrimination against a person for opposing unlawful leave practices, filing a family leave complaint, or testifying in a proceeding.

Child care

In 1987, the Legislature created a coordinator for child care resources in the Department of Social and Health Services, and directed the coordinator to help encourage employer-provided assistance for child care. The following session, the Child Care Coordinating Committee was created to help coordinate child care issues among state agencies and to provide recommendations to the Legislature regarding child care programs.

A Child Care Facility Fund, administered within the Business Assistance Center, is authorized to make one-time grants, loans, or loan guarantees for starting or improving child care facilities.

Child labor and enforcement of employment standards

The industrial welfare law authorizes the Department of Labor and Industries to establish employment standards for Washington workers, except agricultural workers. The department's rules for the employment of minors include minor work permit requirements, maximum hours of work, and

age limitations. Minors may not be employed in certain hazardous occupations.

An employer who violates an industrial welfare standard is guilty of a misdemeanor and is subject to a fine of not less than \$25 or more than \$1,000. The department does not have authority to impose civil penalties or issue orders to restrain violations.

If an employer pays wages at a rate less than the state minimum wage, fails to keep required records, hinders an investigation for enforcing the state minimum wage, or otherwise violates the state minimum wage law, the employer is guilty, upon conviction, of a gross misdemeanor. It is a misdemeanor if the employer fails to pay wages due upon termination of the employee's job, takes unlawful deductions from an employee's wages, or violates wage bond requirements. An employer is subject to a 10 percent penalty if the employer fails to pay a wage claim.

State minimum wage

Under Initiative 518, the Washington state minimum wage was adjusted on January 1, 1990, to \$4.25 an hour. The minimum wage law does not specify further adjustments to the minimum wage rate. In each odd-number year, however, the Office of Financial Management must review and make recommendations for a minimum wage increase.

Overtime work

Under Washington's minimum wage and overtime compensation law and the federal Fair Labor Standards Act, most employees are entitled compensation at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a work week. Employers are not prohibited from requiring employees to work more than 40 hours in a work week.

Summary of Bill:

Family leave and family care

Size of a covered employer - The employers covered by family leave provisions are expanded from those employing a daily average of 100 or more to those employing a daily average of 50 or more.

Coverage of children - The definition of "child" is broadened to include foster children and legal wards, and covers adopted children and foster children under age 16.

Reasons for granting family leave - An employer is entitled to family leave to care for a family member with a serious health condition. Family members include the employee's child under age 18 and a child age 18 and older who is incapable of self-care, the employee's spouse, or parents, including the spouse's parents. A serious health condition is a physical or mental condition that requires inpatient care or continuing treatment or supervision by a health care provider.

Reinstatement rights - The employee's right to job reinstatement on return from family leave is prioritized to favor reinstatement to the old job.

Discrimination for using leave - Employer policies may not discourage or limit family leave or family care.

Employer-assisted child and family care

Child Care Facility Fund - The requirement is added that employers' applications to the Child Care Facility Fund for a loan guarantee, loan, or grant must reflect the results of an assessment of their employees' child care needs. Employee organizations who are seeking to increase the availability of child care services to their members, may apply for a loan guarantee, loan, or grant if the application is submitted jointly with the employer.

Child care resource and referral - The coordinator for child care resources is authorized to provide grants for community-based child care resource and referral agencies to assist employers and consumers to find and develop quality child care services. The coordinator's responsibilities are streamlined to emphasize resource and referral assistance.

State employment child care - The state policy for supporting state employee child care needs includes authority to operate on-site child care centers, contract with providers for child care, provide grants for expansion of child care facilities, and contract for child care resource and referral services. A state employee child care liaison is created to assist state agencies with child care issues and to develop a comprehensive plan for state employee child care.

Revising the child labor laws and providing penalties for violations

Permissible work hours for minors are established. As a general rule, no minor may work more than eight hours per

day, 40 hours per week, or five days per week. During the school year, the following hours apply:

- * Under age 16, up to 3 hours per day on school days and up to 18 hours per week during school weeks.
- * Age 16 and 17, up to 4 hours per day on school days and up to 28 hours per week during school weeks. However, the Department of Labor and Industries is authorized to issue a variance for these minors who are participating in school-approved work study programs.

The department is given authority to impose civil penalties for violations of child labor laws, with a maximum civil penalty of \$1,000 for each violation, and \$1,000 each day for serious or repeated violations. Violations resulting in death or permanent disability are punishable as a class C felony.

Overtime work

Unless a variance is granted, employers may not require work over 8 hours in a day or over 40 hours in a week, except that an employee may be required to work a 4-10 work week. Voluntary overtime is permitted, subject to the current overtime law (one and one-half times regular wages for work over 40 hours per week).

An employer may petition the Department of Labor and Industries for a variance from the hours of work requirements. Eighty percent of the employees in the affected work unit must agree. The proposal may not require employees to work more than 12 hours in a day or more than an average of 42 hours over four work weeks. The variance must be approved at least annually by the employees. Supervisors may not vote.

An employer with continuous production operations in primary metal processing and pulp and paper processing may require an employee to work part of the next work shift if an unanticipated event has or may cause a halt in the production. The employer must exhaust reasonable attempts to obtain voluntary work or the employee must have critical skills required for the work, and the employer must assist the employee with child care and transportation home. The work may not exceed 12 consecutive hours or require more than 16 hours of overtime in a month.

Legislative employees and employees in packing and grading of agricultural commodities, and in commercial canning or freezing are covered for overtime pay.

The new overtime prohibitions do not apply to employers who employ fewer than 100 individuals, employees exempt from the current minimum wage and overtime law, employees in fire protection or law enforcement activities, or to work performed in emergencies, including transporting patients during medical emergencies, and emergency work for utility companies. In addition, an exemption is provided for industries that process perishable agricultural commodities or fish products when seasonal factors could result in loss or deterioration of the product if not processed in a timely manner. The exemption includes businesses supplying essential goods to these industries when at least 75 percent of the business is involved in supplying the goods.

An employee may bring an action against an employer if the employer discharges or otherwise discriminates against the employee for exercising his or her rights under the new overtime requirements.

The new overtime prohibitions do not apply to employees covered by an unexpired collective bargaining agreement that conflicts with the prohibitions until the expiration of the agreement.

State minimum wage

The state minimum wage is changed from \$4.25 to:

- * \$4.75, beginning July 1, 1991.
- * \$5.25, beginning January 1, 1992.

Beginning on April 1, 1993, the rate will be adjusted based on the consumer price index, and be readjusted each April 1.

Legislative employees are covered under the minimum wage law.

Enforcement of state wage laws

The Department of Labor and Industries is given authority to impose civil penalties for violations of the minimum wage laws. A \$1,000 maximum penalty is authorized for hindering the department's enforcement, depending on size of business and gravity of offense. For paying less than the minimum wage, the department may impose a penalty of 20 percent of the amount of wages owed.

The department may order reinstatement and back pay and interest if an employee is discharged for filing a minimum wage claim.

If an employer fails to pay a wage claim, penalties of 20 percent of wages due and interest at 1 percent per month may be imposed.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed except that the child labor and minimum wage provisions take effect July 1, 1991, and the family leave provisions take effect September 1, 1991.

Testimony For: (Commerce & Labor): (Family leave): (1) The Legislature recognizes that families have changed and that support for families is required. Most other industrial countries are far ahead of the United States with respect to family leave policies. Employees should not be faced with the choice between job and family when a family member needs care. It is time to expand the family leave law to other situations since it has not resulted in any known problems. The aging of the population means that more families will be providing care for parents. Older adopted children also need the benefit of having parents available during difficult adjustment periods. (2) Some changes in the law may be acceptable, but the threshold for employer coverage should not be changed.

(Overtime work): The requirement for premium pay for overtime work no longer is a sufficient disincentive to reduce the demand for overtime work. As a result, workers are injured on the job and family life suffers. Employers seem unable or unwilling to correct the problems associated with overtime work demands. Workers should have some control over their hours of work. Lack of planning for overtime is especially difficult for single parents. Since many seasonal industries now store the product before it is processed, there is no need to demand overtime work.

(Minimum wage): The minimum wage should be at a level sufficient to support a family. No one should work full-time and remain in poverty. Tipped employees cannot rely on tips to pay for the essentials, such as rent and food. The amounts of tips is very dependent on factors that cannot be controlled by the worker.

(Child labor enforcement): Under current law, the only penalties for violations of the child labor laws are criminal penalties. The Department of Labor and Industries could improve its enforcement of these laws if civil penalties were available as a tool. A department study of industrial insurance claims filed by minors indicated that a large number of claims occurred in situations where the minor's employment was in violation of the law.

(Wage law enforcement): The department also needs better methods to enforce claims for wages. Civil penalties would provide a needed deterrence to get voluntary compliance.

(Appropriations): None.

Testimony Against: (Commerce & Labor): (Family leave): The state should not be mandating employee benefits. These laws create significant hardships for small businesses. Small business owners need flexibility to survive. They are usually able to work out an acceptable leave with employees on a case-by-case basis.

(Overtime work): Operations that must work around the clock or that have production schedules to meet cannot depend on voluntary overtime to function. Many employees like to have longer work shifts to allow for longer period of time off. Seasonal industries are particularly vulnerable to the problems that could be caused by voluntary overtime. Employers might be required to use more part time workers to keep flexibility in the workforce.

(Minimum wage): The minimum wage should not be adjusted to a rate higher than the federal minimum wage unless the state minimum wage includes a tip credit, a youth minimum wage, and a training wage. Continual increases in the minimum wage will reduce opportunities for unskilled workers and disrupt wage structures. The recent minimum wage increases have resulted in job loss.

(Child labor): While better enforcement is needed, the law should first be clarified. Employers cannot comply when there are conflicts between state and federal law. An advisory committee should be formed to review the law, recommend changes, and then enforcement be strengthened after employers are fully advised of the law's requirements.

(Appropriations): None.

Witnesses: (Commerce & Labor): (In favor of package): Speaker Joe King; Senator Patty Murray; and Larry Kenney, Washington State Labor Council.

(In favor of family leave provisions): Karen Kaiser, Washington State Labor Council; Donna Smith; Amy Stephson and Ann Simon, Coalition for Family Leave; and Penny Germain. (With concerns about family leave provisions): Linda Matson, National Federation of Independent Business; Jan Gee, Washington Retail Association; and Clif Finch, Association of Washington Business. (Opposed to family leave provisions): Gary Smith, Independent Business Association; Diane Sims, Ellen Campion, John Vipond, and Erla Smith.

(In favor of minimum wage provisions): Tony Lee, Washington Association of Churches; Lori Bitner; and Jackie Philbrick. (Opposed to minimum wage provisions unless other concerns are addressed): Linda Matson, National Federation of Independent Business; Jan Gee, Washington Retail Association; Gary Smith, Independent Business Association; Susan Hanley; Gene Vosberg, Washington Restaurant Association; and Nat Jackson.

(In favor of child labor provisions): Mark McDermott, Department of Labor and Industries; and Jeff Johnson, Washington State Labor Council. (Opposed to child labor provisions): Linda Matson, National Federation of Independent Business; Jan Gee, Washington Retail Association; Gary Smith, Independent Business Association; and Kent Meyers.

(In favor of overtime provisions): Don Grinde; John Parks; Aloreia Smith; Susan Wilburn; Donna Smith; Fred Miner; Tom Baker, Aerospace Machinists; Joe Wilder, Communication Workers of America; Brent Knott, Association of Western Pulp and Paper Workers; and Don Heyrich, Amalgamated Transit Union. (Opposed to overtime provisions): Bill Kelley; Carl Fitch; Tom McCombs; Ray Bowles; Mike Loggins; Jim Cameron, Great Western Malting Company; Bob Lawton; Milton Grover, Boeing Company; John L. Brown, Texaco; Linda Matson, National Federation of Independent Business; Jan Gee, Washington Retail Association; Clif Finch, Association of Washington Business; Gary Smith, Independent Business Association; Karma Reavis; Debbie Thomas; Lisa Duz; Diane Sims; and Marty Sangster, Washington Trucking Association.

(Appropriations): None.