

HOUSE BILL REPORT

EHB 2093

As Passed Legislature

Title: An act relating to achieving consistency between state and federal family leave requirements.

Brief Description: Achieving consistency between state and federal family leave requirements.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Boldt, McMorris, Lisk, Clements and Honeyford).

Brief History:

Committee Activity:

Commerce & Labor: 3/3/97, 3/5/97 [DP].

Floor Activity:

Passed House: 3/15/97, 96-0.

Passed Legislature.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 7 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Wood, Assistant Ranking Minority Member; Boldt; Clements; Hatfield and Lisk.

Minority Report: Do not pass. Signed by 2 members: Representatives Conway, Ranking Minority Member; and Cole.

Staff: Chris Cordes (786-7103).

Background: State family leave law. In 1989, the state family leave law was enacted. The family leave law applies to employers of 100 or more employees and to all state government employers. The law entitles a covered employee to up to 12 work weeks of unpaid family leave during any 24-month period to care for the employee's newborn child or adopted child under the age of six, or to care for the employee's terminally ill child who is under age 18.

An employee must give 30 days' written notice of his or her plan to take family leave except in specified circumstances when notice must be given as soon as possible. On return from leave, the employee is entitled to the same employment position as he or

she held when leave commenced or to a position with equivalent benefits and pay at a workplace within 20 miles of the original workplace.

This leave is in addition to leave for sickness or temporary disability related to pregnancy or childbirth. Under Washington's Law Against Discrimination, the Human Rights Commission has adopted a rule requiring employers to grant a woman a leave of absence for the actual period of time that she is sick or temporarily disabled because of pregnancy or childbirth, with some exceptions related to business necessity. Generally, an employer's policy on leave for disability must treat pregnancy and childbirth the same as other disabilities.

If the family leave entitlements are violated, the employee may file a complaint with the Department of Labor and Industries. The department may issue a notice of infraction and employers found to have committed an infraction are subject to a penalty of up to \$200 for a first offense and up to \$1,000 per infraction for continuing to violate the family leave law. If an employer fails to reinstate an employee, reinstatement may be ordered with or without back pay.

Federal family and medical leave law. The federal Family and Medical Leave Act was enacted in 1993. The federal law applies to employers of 50 or more employees and entitles employees to up to 12 weeks of unpaid leave in any 12-month period. Employees may take leave to care for the employee's newborn child or adopted child under age 18 or to care for a spouse, child, or parent with a serious health condition, or because of the serious health condition of the employee that makes the employee unable to perform his or her job. "Serious health condition" includes any period of incapacity due to pregnancy or prenatal care. Special leave rules apply to certain educational employees.

The employee must provide 30 days' notice when the leave is foreseeable. On return from leave, most employees are entitled to be restored to the same employment position as he or she held when leave commenced or to a position with equivalent pay and benefits. Rules adopted to implement the federal law require the employee to be reinstated to the same or a geographically proximate worksite.

The U.S. Department of Labor is authorized to investigate complaints and bring actions in court to recover damages for violations. Employers are liable for wages lost by the employee or actual monetary damages, and double damages may be awarded. Employees may be ordered reinstated. Employees may also file civil actions to recover these damages.

Under the federal law, a state law that provides greater family or medical leave rights is not superseded by the federal law.

Summary of Bill: The Department of Labor and Industries is directed to cease administration and enforcement of the state family leave law until the earlier of the following dates:

- the effective date of repeal of the federal family and medical leave law; or
- July 1 of the year following the year that the federal family and medical leave law is amended to provide less leave than the state law. In determining whether the federal law provides the same or more leave, the department must only consider whether: (1) the total period of leave under the federal law is 12 or more weeks in a 24-month period; and (2) whether the types of leave under the federal law are similar to the types of leave under the state law.

Two requirements under the state family leave law will continue to be enforced, however. An employee's right, upon returning from leave, to be returned to a workplace within 20 miles of the original workplace remains in effect. The family leave entitlement under federal law is in addition to leave for sickness or temporary disability because of pregnancy or childbirth. These requirements will be enforced as provided under the state family leave law, except that an employer receiving an initial notice of infraction will have 30 days to take corrective action and no infraction or penalty may be assessed if the employer complies with the requirements of the initial notice.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: When the state family leave law was originally enacted, it included a "drop dead" provision to relieve employers of having to comply with conflicting state and federal family leave laws. This bill is necessary because that "drop dead" provision was repealed. The bill only suspends the state's family leave law as long as federal law is not repealed or gutted by amendment. This bill ensures that rights under Washington's maternity disability law are maintained. Even if this bill passes, employers will be faced with a morass of conflicting laws that relate to disabilities.

Testimony Against: While the concern of employers facing these various laws is understandable, there are still a few areas in which state law may provide more protection. These need to be accounted for before the bill is enacted.

Testified: (In support) Clif Finch, Association of Washington Business. (Opposed) Robby Stern, Washington State Labor Council.