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HOUSE BILL 2209

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Conway, Wood, McIntire, Darneille and Santos

Read first time 02/27/2001. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to family and medical leave; amending RCW 49.78.010  
2 and 49.78.020; adding new sections to chapter 49.78 RCW; creating a new  
3 section; repealing RCW 49.78.005, 49.78.030, 49.78.040, 49.78.050,  
4 49.78.060, 49.78.070, 49.78.080, 49.78.100, 49.78.110, 49.78.120,  
5 49.78.130, 49.78.140, 49.78.150, 49.78.160, 49.78.170, 49.78.180,  
6 49.78.190, and 49.78.200; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            **Sec. 1.** RCW 49.78.010 and 1989 1st ex.s. c 11 s 1 are each amended  
9 to read as follows:

10            The legislature finds that the demands of the workplace and of  
11 families need to be balanced to promote family stability and economic  
12 security. Changes in workplace leave policies are desirable to  
13 accommodate changes in the work force such as rising numbers of dual-  
14 career couples and working single parents. In addition, given the  
15 mobility of American society, many people no longer have available  
16 community or family support networks and therefore need additional  
17 flexibility in the workplace. The legislature declares it to be in the  
18 public interest to provide reasonable ~~((family leave upon the birth or~~  
19 ~~adoption of a child and to care for a child under eighteen years old~~

1 ~~with a terminal health condition))~~ leave for medical reasons, for the  
2 birth or placement of a child, and for the care of a family member who  
3 has a serious health condition.

4 **Sec. 2.** RCW 49.78.020 and 1996 c 178 s 14 are each amended to read  
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8 (1) "Child" means a biological ~~((or)),~~ adopted, or foster child,  
9 ~~((or))~~ a stepchild, ((living with the employee)) a legal ward, or a  
10 child of a person standing in loco parentis, who is: (a) Under  
11 eighteen years of age; or (b) eighteen years of age or older and  
12 incapable of self-care because of a mental or physical disability.

13 (2) "Department" means the department of labor and industries.

14 (3) "Director" means the director of the department.

15 ~~(4)(a)~~ (a) "Employee" means a person ~~((other than an independent~~  
16 ~~contractor employed by an employer on a continuous basis for the~~  
17 ~~previous fifty two weeks for at least thirty five hours per week))~~ who  
18 has been employed by the employer with respect to whom leave is  
19 requested under section 3 of this act for at least six hundred twenty-  
20 five hours of service in the previous twelve-month period.

21 (b) "Employee" does not mean a person who is employed at a worksite  
22 at which the employer as defined in subsection (5)(a) of this section  
23 employs less than fifty employees if the total number of employees  
24 employed by that employer within seventy-five miles of that worksite is  
25 less than fifty.

26 ~~((+4))~~ (5) "Employer" means: (a) Any person, firm, corporation,  
27 partnership, business trust, legal representative, or other business  
28 entity which engages in any business, industry, profession, or activity  
29 in this state and includes any unit of local government including, but  
30 not limited to, a county, city, town, municipal corporation, quasi-  
31 municipal corporation, or political subdivision, which ~~((+i))~~ employed  
32 a daily average of one hundred or more employees during the last  
33 calendar quarter at the place where the employee requesting leave  
34 reports for work, or ((+ii)) employed a daily average of one hundred or  
35 more employees during the last calendar quarter within a twenty mile  
36 radius of the place where the employee requesting leave reports for  
37 work, where the employer maintains a central hiring location and  
38 customarily transfers employees among workplaces)) employs fifty or

1 more employees for each working day during each of twenty or more  
2 calendar workweeks in the current or preceding calendar year; and (b)  
3 the state, state institutions, and state agencies.

4 ~~((5) "Family leave" means leave from employment to care for a~~  
5 ~~newborn or newly adopted child under the age of six or a child under~~  
6 ~~eighteen years old with a terminal health condition, as provided in RCW~~  
7 ~~49.78.030.))~~

8 (6) "Employment benefits" means all benefits provided or made  
9 available to employees by an employer, including group life insurance,  
10 health insurance, disability insurance, sick leave, annual leave,  
11 educational benefits, and pensions regardless of whether such benefits  
12 are provided by a practice or written policy of an employer or through  
13 an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

14 (7) "Family member" means a child, parent, or spouse of an  
15 employee.

16 (8) "Health care provider" means: (a) A person licensed as a  
17 physician under chapter 18.71 RCW or an osteopathic physician and  
18 surgeon under chapter 18.57 RCW; or (b) any other person determined by  
19 the director to be capable of providing health care services.

20 ~~((7))~~ (9) "Leave for a family member's serious health condition"  
21 means leave as described in section 3(1)(c) of this act.

22 (10) "Leave for the birth or placement of a child" means leave as  
23 described in section 3(1) (a) or (b) of this act.

24 (11) "Leave for the employee's serious health condition" means  
25 leave as described in section 3(1)(d) of this act.

26 (12) "Parent" means ((a biological or adoptive parent, or a  
27 stepparent)) the biological or adoptive parent of an employee or an  
28 individual who stood in loco parentis to an employee when the employee  
29 was a child.

30 ~~((8))~~ (13) "Reduced leave schedule" means ((leave scheduled for  
31 fewer than an employee's usual number of hours or days per workweek))  
32 a leave schedule that reduces the usual number of hours per workweek,  
33 or hours per workday, of an employee.

34 ~~((9) "Terminal health condition" means a condition caused by~~  
35 ~~injury, disease, or illness, that, within reasonable medical judgment,~~  
36 ~~is incurable and will produce death within the period of leave to which~~  
37 ~~the employee is entitled.))~~

38 (14) "Serious health condition" means an illness, injury,  
39 impairment, or physical or mental condition that involves: (a)

1 Inpatient care in a hospital, hospice, or residential medical care  
2 facility; or (b) continuing treatment by a health care provider.

3 (15) "Spouse" means a husband or wife, as the case may be.

4 NEW SECTION. Sec. 3. A new section is added to chapter 49.78 RCW  
5 to read as follows:

6 ENTITLEMENT TO LEAVE. (1) Subject to section 8 of this act, an  
7 employee is entitled to a total of twelve workweeks of leave during any  
8 twelve-month period for one or more of the following:

9 (a) Because of the birth of a child of the employee and in order to  
10 care for such child;

11 (b) Because of the placement of a child with the employee for  
12 adoption or foster care;

13 (c) In order to care for a family member of the employee, if such  
14 family member has a serious health condition; or

15 (d) Because of a serious health condition that makes the employee  
16 unable to perform the functions of the position of such employee.

17 (2) The entitlement to leave for the birth or placement of a child  
18 expires at the end of the twelve-month period beginning on the date of  
19 such birth or placement.

20 NEW SECTION. Sec. 4. A new section is added to chapter 49.78 RCW  
21 to read as follows:

22 LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. (1) Leave  
23 for the birth or placement of a child may not be taken by an employee  
24 intermittently or on a reduced leave schedule unless the employee and  
25 the employer of the employee agree otherwise. Subject to section 6(2)  
26 of this act and section 8(2)(e) of this act, leave for a family  
27 member's serious health condition or the employee's serious health  
28 condition may be taken intermittently or on a reduced leave schedule  
29 when medically necessary. The taking of leave intermittently or on a  
30 reduced leave schedule pursuant to this section may not result in a  
31 reduction in the total amount of leave to which the employee is  
32 entitled under section 3 of this act beyond the amount of leave  
33 actually taken.

34 (2) If an employee requests intermittent leave, or leave on a  
35 reduced leave schedule, for a family member's serious health condition  
36 or the employee's serious health condition when the condition is  
37 foreseeable based on planned medical treatment, the employer may

1 require such employee to transfer temporarily to an available  
2 alternative position offered by the employer for which the employee is  
3 qualified and that:

4 (a) Has equivalent pay and benefits; and

5 (b) Better accommodates recurring periods of leave than the regular  
6 employment position of the employee.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.78 RCW  
8 to read as follows:

9 UNPAID LEAVE PERMITTED--RELATIONSHIP TO PAID LEAVE. (1) Except as  
10 provided in subsection (2) of this section, leave granted under section  
11 3 of this act may consist of unpaid leave.

12 (2)(a) If an employer provides paid leave for fewer than twelve  
13 workweeks, the additional weeks of leave necessary to attain the twelve  
14 workweeks of leave required under this chapter may be provided without  
15 compensation.

16 (b) An employee may elect, or an employer may require the employee:

17 (i) To substitute any of the accrued paid vacation leave, personal  
18 leave, or family leave of the employee for leave for the birth or  
19 placement of a child or for a family member's serious health condition  
20 for any part of the twelve-week period of such leave; or (ii) to  
21 substitute any of the accrued paid vacation leave, personal leave, or  
22 medical or sick leave of the employee for leave provided for a family  
23 member's serious health condition or the employee's serious health  
24 condition for any part of the twelve-week period of such leave, except  
25 that nothing in this chapter shall require an employer to provide paid  
26 sick leave or paid medical leave in any situation in which such  
27 employer would not normally provide any such paid leave.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.78 RCW  
29 to read as follows:

30 FORESEEABLE LEAVE. (1) If the necessity for leave for the birth or  
31 placement of a child is foreseeable based on an expected birth or  
32 placement, the employee shall provide the employer with not less than  
33 thirty days' notice, before the date the leave is to begin, of the  
34 employee's intention to take leave for the birth or placement of a  
35 child, except that if the date of the birth or placement requires leave  
36 to begin in less than thirty days, the employee shall provide such  
37 notice as is practicable.

1 (2) If the necessity for leave for a family member's serious health  
2 condition or the employee's serious health condition is foreseeable  
3 based on planned medical treatment, the employee:

4 (a) Must make a reasonable effort to schedule the treatment so as  
5 not to disrupt unduly the operations of the employer, subject to the  
6 approval of the health care provider of the employee or the health care  
7 provider of the family member, as appropriate; and

8 (b) Must provide the employer with not less than thirty days'  
9 notice, before the date the leave is to begin, of the employee's  
10 intention to take leave for a family member's serious health condition  
11 or the employee's serious health condition, except that if the date of  
12 the treatment requires leave to begin in less than thirty days, the  
13 employee must provide such notice as is practicable.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.78 RCW  
15 to read as follows:

16 SPOUSES EMPLOYED BY SAME EMPLOYER. If a husband and wife entitled  
17 to leave under this chapter are employed by the same employer, the  
18 aggregate number of workweeks of leave to which both may be entitled  
19 may be limited to twelve workweeks during any twelve-month period, if  
20 such leave is taken: (1) For the birth or placement of a child; or (2)  
21 for a parent's serious health condition.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.78 RCW  
23 to read as follows:

24 CERTIFICATION. (1) An employer may require that a request for  
25 leave for a family member's serious health condition or the employee's  
26 serious health condition be supported by a certification issued by the  
27 health care provider of the employee or of the family member, as  
28 appropriate. The employee must provide, in a timely manner, a copy of  
29 such certification to the employer.

30 (2) Certification provided under subsection (1) of this section is  
31 sufficient if it states:

32 (a) The date on which the serious health condition commenced;

33 (b) The probable duration of the condition;

34 (c) The appropriate medical facts within the knowledge of the  
35 health care provider regarding the condition;

36 (d)(i) For purposes of leave for a family member's serious health  
37 condition, a statement that the employee is needed to care for the

1 family member and an estimate of the amount of time that such employee  
2 is needed to care for the family member; and

3 (ii) For purposes of leave for the employee's serious health  
4 condition, a statement that the employee is unable to perform the  
5 functions of the position of the employee;

6 (e) In the case of certification for intermittent leave, or leave  
7 on a reduced leave schedule, for planned medical treatment, the dates  
8 on which such treatment is expected to be given and the duration of  
9 such treatment;

10 (f) In the case of certification for intermittent leave, or leave  
11 on a reduced leave schedule, for the employee's serious health  
12 condition, a statement of the medical necessity for the intermittent  
13 leave or leave on a reduced leave schedule, and the expected duration  
14 of the intermittent leave or reduced leave schedule; and

15 (g) In the case of certification for intermittent leave, or leave  
16 on a reduced leave schedule, for a family member's serious health  
17 condition, a statement that the employee's intermittent leave or leave  
18 on a reduced leave schedule is necessary for the care of the family  
19 member who has a serious health condition, or will assist in their  
20 recovery, and the expected duration and schedule of the intermittent  
21 leave or reduced leave schedule.

22 (3) If the employer has reason to doubt the validity of the  
23 certification provided under subsection (1) of this section for leave  
24 for a family member's serious health condition or the employee's  
25 serious health condition, the employer may require, at the expense of  
26 the employer, that the employee obtain the opinion of a second health  
27 care provider designated or approved by the employer concerning any  
28 information certified under subsection (2) of this section for such  
29 leave. The second health care provider may not be employed on a  
30 regular basis by the employer.

31 (4) If the second opinion described in subsection (3) of this  
32 section differs from the opinion in the original certification provided  
33 under subsection (1) of this section, the employer may require, at the  
34 expense of the employer, that the employee obtain the opinion of a  
35 third health care provider designated or approved jointly by the  
36 employer and the employee concerning the information certified under  
37 subsection (2) of this section. The opinion of the third health care  
38 provider concerning the information certified under subsection (2) of

1 this section is considered to be final and is binding on the employer  
2 and the employee.

3 (5) The employer may require that the employee obtain subsequent  
4 recertifications on a reasonable basis.

5 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.78 RCW  
6 to read as follows:

7 EMPLOYMENT PROTECTION. (1)(a) Except as provided in (b) of this  
8 subsection, any employee who takes leave under section 3 of this act  
9 for the intended purpose of the leave is entitled, on return from such  
10 leave:

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

13 (ii) To be restored to an equivalent position with equivalent  
14 employment benefits, pay, and other terms and conditions of employment  
15 at a workplace within twenty miles of the employee's workplace when  
16 leave commenced.

17 (b) The taking of leave under section 3 of this act may not result  
18 in the loss of any employment benefits accrued prior to the date on  
19 which the leave commenced.

20 (c) Nothing in this section entitles any restored employee to:

21 (i) The accrual of any seniority or employment benefits during any  
22 period of leave; or

23 (ii) Any right, benefit, or position of employment other than any  
24 right, benefit, or position to which the employee would have been  
25 entitled had the employee not taken the leave.

26 (d) As a condition of restoration under (a) of this subsection for  
27 an employee who has taken leave for the employee's serious health  
28 condition, the employer may have a uniformly applied practice or policy  
29 that requires each such employee to receive certification from the  
30 health care provider of the employee that the employee is able to  
31 resume work, except that nothing in this subsection (1)(d) supersedes  
32 a valid local law or a collective bargaining agreement that governs the  
33 return to work of such employees.

34 (e) Nothing in this subsection (1) prohibits an employer from  
35 requiring an employee on leave to report periodically to the employer  
36 on the status and intention of the employee to return to work.

37 (2) An employer may deny restoration under subsection (1) of this  
38 section to any salaried employee who is among the highest paid ten

1 percent of the employees employed by the employer within seventy-five  
2 miles of the facility at which the employee is employed if:

3 (a) Such denial is necessary to prevent substantial and grievous  
4 economic injury to the operations of the employer;

5 (b) The employer notifies the employee of the intent of the  
6 employer to deny restoration on such basis at the time the employer  
7 determines that such injury would occur; and

8 (c) If the leave has commenced, the employee elects not to return  
9 to employment after receiving such notice.

10 NEW SECTION. Sec. 10. A new section is added to chapter 49.78 RCW  
11 to read as follows:

12 EMPLOYMENT BENEFITS. During any period of leave taken under  
13 section 3 of this act, if the employee is not eligible for any employer  
14 contribution to medical or dental benefits under an applicable  
15 collective bargaining agreement or employer policy during any period of  
16 leave, an employer shall allow the employee to continue, at his or her  
17 own expense, medical or dental insurance coverage, including any spouse  
18 and dependent coverage, in accordance with state or federal law. The  
19 premium to be paid by the employee shall not exceed one hundred two  
20 percent of the applicable premium for the leave period.

21 NEW SECTION. Sec. 11. A new section is added to chapter 49.78 RCW  
22 to read as follows:

23 PROHIBITED ACTS. (1) It is unlawful for any employer:

24 (a) To interfere with, restrain, or deny the exercise of, or the  
25 attempt to exercise, any right provided under this chapter; or

26 (b) To discharge or in any other manner discriminate against any  
27 individual for opposing any practice made unlawful by this chapter.

28 (2) It is unlawful for any person to discharge or in any other  
29 manner discriminate against any individual because such individual:

30 (a) Has filed any charge, or has instituted or caused to be  
31 instituted any proceeding, under or related to this chapter;

32 (b) Has given, or is about to give, any information in connection  
33 with any inquiry or proceeding relating to any right provided under  
34 this chapter; or

35 (c) Has testified, or is about to testify, in any inquiry or  
36 proceeding relating to any right provided under this chapter.

1        NEW SECTION. Sec. 12. A new section is added to chapter 49.78 RCW  
2 to read as follows:

3        INVESTIGATIVE AUTHORITY. (1) To ensure compliance with the  
4 provisions of this chapter, or any rule adopted under this chapter, the  
5 director shall have, subject to subsection (3) of this section, the  
6 investigative authority provided under RCW 49.46.040(1).

7        (2) Any employer shall make, keep, and preserve records pertaining  
8 to compliance with this chapter in accordance with RCW 49.46.040(3) and  
9 in accordance with rules adopted by the director.

10       (3) The director may not under the authority of this section  
11 require any employer to submit to the director any books or records  
12 more than once during any twelve-month period, unless the director has  
13 reasonable cause to believe there may exist a violation of this chapter  
14 or any regulation or order issued pursuant to this chapter, or is  
15 investigating a complaint pursuant to section 14 of this act.

16       (4) For the purposes of any investigation provided for in this  
17 section, the director may issue subpoenas to compel the attendance of  
18 witnesses or parties and the production of books, papers, or records.

19       NEW SECTION. Sec. 13. A new section is added to chapter 49.78 RCW  
20 to read as follows:

21       CIVIL ACTION BY EMPLOYEES. (1) Any employer who violates section  
22 11 of this act is liable:

23       (a) For damages equal to:

24       (i) The amount of:

25       (A) Any wages, salary, employment benefits, or other compensation  
26 denied or lost to such employee by reason of the violation; or

27       (B) In a case in which wages, salary, employment benefits, or other  
28 compensation have not been denied or lost to the employee, any actual  
29 monetary losses sustained by the employee as a direct result of the  
30 violation, such as the cost of providing care, up to a sum equal to  
31 twelve weeks of wages or salary for the employee;

32       (ii) The interest on the amount described in (a)(i) of this  
33 subsection calculated at the prevailing rate; and

34       (iii) An additional amount as liquidated damages equal to the sum  
35 of the amount described in (a)(i) of this subsection and the interest  
36 described in (a)(ii) of this subsection, except that if an employer who  
37 has violated section 11 of this act proves to the satisfaction of the  
38 court that the act or omission which violated section 11 of this act

1 was in good faith and that the employer had reasonable grounds for  
2 believing that the act or omission was not a violation of section 11 of  
3 this act, such court may, in the discretion of the court, reduce the  
4 amount of the liability to the amount and interest determined under  
5 (a)(i) and (ii) of this subsection, respectively; and

6 (b) For such equitable relief as may be appropriate, including  
7 employment, reinstatement, and promotion.

8 (2) An action to recover the damages or equitable relief prescribed  
9 in subsection (1) of this section may be maintained against any  
10 employer in any court of competent jurisdiction by any one or more  
11 employees for and in behalf of:

12 (a) The employees; or

13 (b) The employees and other employees similarly situated.

14 (3) The court in such an action shall, in addition to any judgment  
15 awarded to the plaintiff, allow reasonable attorneys' fees, reasonable  
16 expert witness fees, and other costs of the action to be paid by the  
17 defendant.

18 (4) Unless the action described in (a) or (b) of this subsection is  
19 dismissed without prejudice on motion of the director, the right  
20 provided by subsection (2) of this section to bring an action by or on  
21 behalf of any employee shall terminate:

22 (a) On the filing of a complaint by the director in an action under  
23 section 14 of this act in which restraint is sought of any further  
24 delay in the payment of the amount described in subsection (1)(a) of  
25 this section to such employee by an employer responsible under  
26 subsection (1) of this section for the payment; or

27 (b) On the filing of a complaint by the director in an action under  
28 section 14 of this act in which a recovery is sought of the damages  
29 described in subsection (1)(a) of this section owing to an employee by  
30 an employer liable under subsection (1) of this section.

31 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.78 RCW  
32 to read as follows:

33 **AGENCY ACTION.** (1) The director shall receive, investigate, and  
34 attempt to resolve complaints of violations of section 11 of this act  
35 in the same manner that the director receives, investigates, and  
36 attempts to resolve complaints of violations of RCW 49.46.020 and  
37 49.46.130. The director may bring an action in superior court to  
38 recover the damages described in section 13 of this act.

1 (2) Except as provided in this subsection, an action may be brought  
2 under this section within two years of the date of the last event  
3 constituting the alleged violation for which the action is brought. In  
4 the case of such action brought for a willful violation of section 11  
5 of this act, such action may be brought within three years of the date  
6 of the last event constituting the alleged violation for which such  
7 action is brought. In determining when an action is commenced by the  
8 director under this section for the purposes of this subsection, it is  
9 considered to be commenced on the date when the complaint is filed.

10 (3) The director also may bring an action in superior court:

11 (a) To restrain violations of section 11 of this act, including the  
12 restraint of any withholding of payment of wages, salary, employment  
13 benefits, or other compensation, plus interest, found by the court to  
14 be due to eligible employees; or

15 (b) To award such other equitable relief as may be appropriate,  
16 including employment, reinstatement, and promotion.

17 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.78 RCW  
18 to read as follows:

19 NOTICE. Each employer shall post and keep posted, in conspicuous  
20 places on the premises of the employer where notices to employees and  
21 applicants for employment are customarily posted, a notice, to be  
22 prepared or approved by the director, setting forth excerpts from, or  
23 summaries of, the pertinent provisions of this chapter and information  
24 pertaining to the filing of a charge. Any employer that willfully  
25 violates this section may be subject to a civil penalty of not more  
26 than one hundred dollars for each separate offense.

27 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.78 RCW  
28 to read as follows:

29 FAMILY AND MEDICAL LEAVE ENFORCEMENT ACCOUNT. The family and  
30 medical leave enforcement account is created in the custody of the  
31 state treasurer. Any sums recovered by the director pursuant to  
32 section 14 of this act shall be deposited into the account and shall be  
33 paid to each employee affected. Any such sums not paid to an employee  
34 because of inability to do so within a period of three years shall be  
35 used only for the purposes of administering and enforcing this chapter.  
36 Any penalties collected under section 15 of this act shall be deposited  
37 into the account and shall be used only for the purposes of

1 administering and enforcing this chapter. Only the director or the  
2 director's designee may authorize expenditures from the account. The  
3 account is subject to allotment procedures under chapter 43.88 RCW, but  
4 an appropriation is not required for expenditures.

5 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.78 RCW  
6 to read as follows:

7 EFFECT ON OTHER LAWS. Nothing in this chapter shall be construed:  
8 (1) To modify or affect any state or local law prohibiting  
9 discrimination on the basis of race, religion, color, national origin,  
10 sex, age, or disability; or (2) to supersede any provision of any local  
11 law that provides greater family or medical leave rights than the  
12 rights established under this chapter.

13 NEW SECTION. **Sec. 18.** A new section is added to chapter 49.78 RCW  
14 to read as follows:

15 EFFECT ON EXISTING EMPLOYMENT BENEFITS. Nothing in this chapter  
16 diminishes the obligation of an employer to comply with any collective  
17 bargaining agreement or any employment benefit program or plan that  
18 provides greater family or medical leave rights to employees than the  
19 rights established under this chapter. The rights established for  
20 employees under this chapter may not be diminished by any collective  
21 bargaining agreement or any employment benefit program or plan.

22 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.78 RCW  
23 to read as follows:

24 ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this  
25 chapter shall be construed to discourage employers from adopting or  
26 retaining leave policies more generous than any policies that comply  
27 with the requirements under this chapter.

28 NEW SECTION. **Sec. 20.** A new section is added to chapter 49.78 RCW  
29 to read as follows:

30 (1) Leave under this chapter and leave under the federal family and  
31 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6)  
32 is in addition to any leave for sickness or temporary disability  
33 because of pregnancy or childbirth.

1 (2) Leave taken under this chapter must be taken concurrently with  
2 any leave taken under the federal family and medical leave act of 1993  
3 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

4 NEW SECTION. **Sec. 21.** A new section is added to chapter 49.78 RCW  
5 to read as follows:

6 RULE-MAKING AUTHORITY. The director shall adopt rules as necessary  
7 to implement this chapter.

8 NEW SECTION. **Sec. 22.** A new section is added to chapter 49.78 RCW  
9 to read as follows:

10 CONSTRUCTION. This chapter must be construed to the extent  
11 possible in a manner that is consistent with similar provisions, if  
12 any, of the federal family and medical leave act of 1993 (Act Feb. 5,  
13 1993, P.L. 103-3, 107 Stat. 6), and that gives consideration to the  
14 rules, precedents, and practices of the federal department of labor  
15 relevant to the federal act.

16 NEW SECTION. **Sec. 23.** The following acts or parts of acts are  
17 each repealed:

18 (1) RCW 49.78.005 (Administration and enforcement of this chapter  
19 to cease while federal family and medical leave act provides the same  
20 or more family leave--Rights under RCW 49.78.070(1)(b) preserved--  
21 Enforcement) and 1997 c 16 s 1;

22 (2) RCW 49.78.030 (Requirements--Limitation) and 1989 1st ex.s. c  
23 11 s 3;

24 (3) RCW 49.78.040 (Notice to employer) and 1989 1st ex.s. c 11 s 4;

25 (4) RCW 49.78.050 (Requirements for confirmation--Second opinion)  
26 and 1989 1st ex.s. c 11 s 5;

27 (5) RCW 49.78.060 (Both parents with same employer) and 1989 1st  
28 ex.s. c 11 s 6;

29 (6) RCW 49.78.070 (Employee employment rights--Limitations) and  
30 1989 1st ex.s. c 11 s 7;

31 (7) RCW 49.78.080 (Employee benefits) and 1989 1st ex.s. c 11 s 8;

32 (8) RCW 49.78.100 (Additional rights--Remedies) and 1989 1st ex.s.  
33 c 11 s 10;

34 (9) RCW 49.78.110 (Collective bargaining agreements--Obligations  
35 and rights not diminished) and 1989 1st ex.s. c 11 s 11;

1 (10) RCW 49.78.120 (Collective bargaining agreements--Application  
2 of chapter--Grievance procedures) and 1989 1st ex.s. c 11 s 12;

3 (11) RCW 49.78.130 (Discrimination prohibited) and 1989 1st ex.s.  
4 c 11 s 13;

5 (12) RCW 49.78.140 (Complaint--Contents--Notice--Investigation) and  
6 1989 1st ex.s. c 11 s 14;

7 (13) RCW 49.78.150 (Notice of infraction--Contents) and 1989 1st  
8 ex.s. c 11 s 15;

9 (14) RCW 49.78.160 (Notice of infraction--Service) and 1989 1st  
10 ex.s. c 11 s 16;

11 (15) RCW 49.78.170 (Notice of infraction--State agencies) and 1989  
12 1st ex.s. c 11 s 17;

13 (16) RCW 49.78.180 (Appeal--Hearings--Decisions--Review--Appeal of  
14 final decision) and 1989 1st ex.s. c 11 s 18;

15 (17) RCW 49.78.190 (Penalties) and 1989 1st ex.s. c 11 s 19; and

16 (18) RCW 49.78.200 (Poster required) and 1989 1st ex.s. c 11 s 20.

17 NEW SECTION. **Sec. 24.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 25.** Captions used in this act are not any part  
22 of the law.

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