

# HOUSE BILL REPORT

## HB 1173

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to family leave insurance.

**Brief Description:** Establishing family leave insurance.

**Sponsors:** Representatives Dickerson, Conway, Wood, Green, Cody, Williams, Simpson, Hudgins, Campbell, McCoy, Ericks, Hunt, Blake, Roberts, Fromhold, Sells, Moeller, Appleton, Darneille, Morrell, Schual-Berke, Chase, Kenney, Takko, Hasegawa, Kagi, Ormsby, Haigh and Santos.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/31/05, 3/2/05 [DPS].

**Brief Summary of Substitute Bill**

- Establishes the family leave insurance program.
- Provides for payment of benefits of \$250 per week for up to five weeks to employees on family leave.
- Provides for assessment of premiums of 2 cents per hour worked per employee, and authorizes employers to deduct the full amount of premiums from employee wages.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

**Staff:** Jill Reinmuth (786-7134).

**Background:**

Federal and state laws provide that certain employees are entitled to unpaid family and medical leave.

Federal Law: Under the federal Family and Medical Leave Act, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified family and medical reasons, and to be reinstated to their original jobs or equivalent jobs.

An eligible employee is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that worksite is less than 50. A covered employer is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year.

Leave may be taken for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an immediate family member who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to work.

State Law: Under the state Family Leave Law, eligible employees are entitled to reinstatement to workplaces within 20 miles of their original workplaces. Employees are also entitled to leave for sickness or temporary disability related to pregnancy or childbirth in addition to leave under federal law. Enforcement of other provisions of the state Family Leave Law is currently suspended.

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### **Summary of Substitute Bill:**

A new partial wage replacement program, the family leave insurance program, is established. Beginning on September 3, 2006, benefits of \$250 per week for up to five weeks are paid to employees on family leave. Premiums of 2 cents per hour worked per employee are paid by employers. The full amount of the premiums may be deducted by employers from employee wages. The program is administered by the Department of Labor and Industries (Department).

Family Leave: "Family leave" means leave: (1) to care for a newborn child; (2) to care for a child placed with the employee for adoption or foster care; and (3) to care for a child, spouse, or parent of an employee or spouse with a serious health condition.

Eligibility: An individual is eligible to receive benefits if he or she: (1) is employed by an employer subject to unemployment compensation; and (2) has worked 680 hours in employment covered by unemployment compensation during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family leave. An employer or a self-employed person not mandatorily covered may elect coverage.

Other Requirements: If leave is foreseeable, the employee is required to provide notice of leave to his or her employer. If leave is to care for a family member with a serious health condition, the employee may be required by the Department to support his or her claim with medical certification.

Disqualification: An employee is disqualified from receiving benefits if the employee made false statements to obtain benefits.

Other Leave and/or Compensation: An employer may require an employee who is receiving benefits to take the leave concurrently with leave under federal, state, or local law, with certain exceptions. An employer may not require an employee to exhaust paid leave before receiving benefits. An employee may elect when he or she uses paid leave. An employee may not receive benefits while entitled to certain workers' compensation, unemployment compensation, or crime victims' compensation benefits.

Benefits: An eligible employee on family leave is entitled to receive benefits for a maximum of five weeks in an application year. Initially, the amount of the weekly benefit is \$250 for an eligible employee who was regularly working 40 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an eligible employee who was regularly working less than 40 hours per week, and for an eligible employee who is on leave for fewer hours per week than he or she was regularly working. Each year thereafter, the amount of the weekly benefit is adjusted for inflation by the Department.

Reinstatement: An eligible employee is entitled to return to the same job or an equivalent position at the end of the period in which he or she receives benefits, with certain exceptions.

Premiums: Beginning on January 1, 2006, an employer is required to pay the premium, and is authorized to retain the full amount of the premium from employee wages. Initially the premium is 2 cents per hour worked per employee. Every year thereafter, the amount of the premium is adjusted by the Department to ensure that it is at the lowest rate necessary to pay benefits and administrative costs, and maintain actuarial solvency of the program on a current basis.

Penalties: An employee who receives benefits erroneously or as a result of willful misrepresentation must repay the benefits and may be subject to penalties. An employer that fails to make reports or pay premiums required by the Department is subject to sanctions, including penalties, interest, and collection procedures.

Confidentiality: Information in an employee's record is not subject to public disclosure, but an employer may review the records of its employee in connection with a pending claim. Information that the Department obtains from employers' records for administration of the program is not subject to public disclosure.

Discrimination: An employer or other person may not discriminate against a person for filing a claim for benefits, communicating an intent to file a claim, or testifying or assisting in a proceeding related to a family leave insurance.

Dedicated Account: A dedicated account is established. Premiums and penalties are paid into and benefits are paid out of the account.

Loan: If necessary, the director may loan funds from the supplemental pension fund to the family leave insurance account. The loaned funds are for the purposes of administering the

family leave insurance program and paying family leave insurance benefits. The loan funds must be repaid, with interest, from the family leave insurance account to the supplemental pension fund within one year of the initial loan, and within three months of any subsequent loans.

Reports: Beginning on September 1, 2006, and annually thereafter, the Department must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

**Substitute Bill Compared to Original Bill:**

The provision allowing employers to deduct premiums from employee wages is modified. Employers may deduct the full amount (rather than one-half of the amount).

Several definitions are modified. "Family member" excludes domestic partners and parents of domestic partners. "Family leave" excludes leave from employment because of the individual's serious health condition. "Serious health condition" specifies that the period of incapacity or continuing treatment be expected to exceed the waiting period (five work days). Related changes are made.

The implementation dates for premiums and benefits are modified. Premiums are owed beginning January 1, 2006 (rather than October 1, 2005). Benefits are payable beginning September 3, 2006 (rather than July 2, 2006).

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This bill is an important bill for families and children. This bill will not solve all the problems, but it will help at a critical time.

Americans work more hours than others. Over the past two decades, the average number of hours worked each year by women has increased by 300 hours. One in 5 workers do not have vacation or sick leave. About forty percent of the workforce is not covered by the Family and Medical Leave Act. Of the workers who are covered by the FMLA, many are not paid.

When my son was born prematurely and hospitalized, I had to go back to work two days after his birth. I had to save my leave for the time when he came home. The circumstances made it difficult to be productive. This benefit – \$250 per week – is not a lot, but it is helpful. It is not a "get rich" plan.

I had to go back to work two weeks after my child's birth, against my doctor's orders. Both my baby and I had complications. This bill would provide a substantial benefit to middle-income families.

Family leave insurance is good for employees. It would allow them to care for loved ones, themselves, or newborns. It would provide stability for families in difficult times.

Family leave insurance is good for businesses. They will be able to retain their workers, and save thousands of dollars in recruitment and retraining costs. It will limit lost productivity. Employees will not be forced to quit because of family emergencies. This is a win-win. It is a small amount to pay.

Currently, some people on family leave are forced to seek energy assistance or go to food banks, when they should be able to care for their loved ones. They shouldn't have to make this choice. Family leave benefits can be used to cover basic living expenses.

For sixty years, workers in five states have had temporary disability insurance, and these states (including California) have prospered economically. About twenty percent of the American workforce is already covered. Other countries provide paid family leave. We should too.

(With concerns) If a temporary agency fails to remit premiums on behalf of a customer, the customer is required to pay those premiums a second time.

**Testimony Against:** This bill limits a employer's flexibility. It takes resources away from other expenses.

This bill also adds administrative complexity. It adds a new layer of record keeping and certification requirements. It would be especially difficult to administer for temporary, part-time, and seasonal workers.

The fiscal note is huge. It estimates costs of \$184 million, and 61 FTEs. It will take \$60 million from the state economy, and put it in the bank.

Small farms would have problems with this, especially with respect to seasonal workers. By itself, the program may seem reasonable, but there are many other laws. Together, these laws are a lot for small farms to administer.

In addition to direct costs for businesses, there are indirect costs that offset any savings from limiting turnover. These costs include record keeping, overtime, and training for others.

This bill is a poor choice for small businesses. For a small business to have one employee out for a long time really hurts.

In the food industry, employees already have high levels of benefits. Yet employers would still have to pay under this bill. California law allows employers to establish their own programs.

This bill is more than just family leave insurance. It is a brand new family leave law that applies to small businesses with as few as one employee. It is unnecessary because most small businesses try to accommodate the needs of their employees.

There are multiple, overlapping laws on family leave. This bill ignores the conflicts with between these laws. If the bill is going to move forward, there should be a comprehensive package that deals with all of those laws.

This bill is about individuals, not their families. In California, the ratio of leave for individuals to leave for family members is 5 to 1. Courts have said that the flu or a virus can be a serious medical condition.

When family leave was originally established, a key compromise was that imposing the burden on employers would be balanced by making the leave unpaid. Now, that leave will be subsidized.

**Persons Testifying:** Representative Dickerson, prime sponsor; Richard Clark, Amtech Corporation; Selena Allen, Kathleen Porch-Teschner, and Jeri Wood, citizen; Dolores Gohndrone, Hallmark Services; Michael Radice, Greenwood True Value Hardware; Marilyn Watkins, Economic Opportunity Institute; and Bruce Reeves, Senior Citizens Lobby.

(With concerns) Rob Menaul, Washington State Hospital Association.

(Opposed) Mark Johnson, Washington Retail Association; Kris Tefft, Association of Washington Business; Erin Wendle-Lahern, Coldwell Banker; Clif Finch, Washington Food Industry; Dan Fazio, Washington Farm Bureau; Lesa Boxx, Boxx Berry Farms; Gary Smith, Independent Business Association; and Carolyn Logue, National Federation of Independent Business.

**Persons Signed In To Testify But Not Testifying:** None.