

SENATE BILL REPORT

SSB 6185

As Passed Senate, February 8, 2006

Title: An act relating to family and medical leave.

Brief Description: Modifying the family and medical leave act.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Keiser, Kohl-Welles, Thibaudeau, Kline and Poulsen).

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/12/06, 2/1/06 [DPS, DNP].

Passed Senate: 2/8/06, 37-12.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6185 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

Minority Report: Do not pass.

Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

Staff: Jennifer Strus (786-7316)

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

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 upon their return.

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.

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.

Summary of Bill: Portions of the state Family and Medical Leave Act are amended to include many provisions of the federal Family and Medical Leave Act.

An employee is entitled to a total of 12 workweeks of leave in a 12 month period for any of the following: the birth of a child; the placement of a child with the employee for adoption or foster care; to care for a family member of the employee, if the family member has a serious health condition; or a serious health condition that makes the employee unable to perform his or her job duties. The leave entitlement for birth or placement of a child expires at the end of the 12 month period beginning on the date of the birth or placement.

The act applies to all employers in the state, including local governments, which employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. The provisions of the bill also apply to the state, state institutions and state agencies, regardless of size.

Leave may be taken intermittently or on a reduced leave schedule, with the employer's agreement: for the birth or placement of a child; when medically necessary for the medical treatment of a serious health condition; or to provide care or psychological comfort to an immediate family member with a serious health condition. There is no limit on the size of the increment of intermittent or reduced leave although the employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave.

Intermittent or reduced schedule leave cannot result in a reduction of the total amount of leave to which the employee is entitled.

If the leave for birth or placement of a child is foreseeable based on the expected birth or placement, the employee must provide the employer with at least 30 days notice before the date leave is to begin. If the birth date or placement makes giving 30 days notice impracticable, then the employee must provide as much notice to the employer as possible.

If leave to care for a family member with a serious health condition or because of the employee's health condition becomes necessary, the employee must make a reasonable effort to schedule the treatment so as to not unduly interrupt the operations of the employer. The employee must also provide the employer notice of leave at least 30 days before leave is to begin, unless impracticable.

An employer may require that a leave request for a family member's serious health condition or the employee's serious health condition be supported by a health care provider's certification. The employee must provide a copy of the certification to the employer in a timely manner. If the employer has reason to doubt the validity of the certification, he or she can request the opinion of a second health care provider.

Any person taking leave under this act is entitled to the following upon return from leave: to be restored to the position he or she held when leave started; or to be restored to an equivalent

position with equal benefits, pay and other terms and conditions of employment at a workplace within 20 miles of the employee's workplace when leave commenced. Employees maintain all employment benefits accrued before leave was taken.

During the leave period, if the employee is not eligible to receive employer-paid benefits, the employee may opt to continue the benefits at the employee's expense. The premium paid by the employee cannot exceed 102 percent of the applicable premium for the leave period.

An employer cannot discharge or discriminate against any employee who takes leave under this act.

The director of the Department of Labor and Industries (L&I) is required to investigate any complaint under this act. Any employer found to have violated the act after an investigation is subject to a civil penalty of at least \$1000 per violation. These penalties are collected by L&I and deposited into the family and medical leave enforcement account, which is created in this act. Employees may also bring suit directly against the employer for violation of this act and could recover damages equal to the amount of wages, benefits, salary or other compensation lost or denied as a result of the violation or any actual monetary losses as a result of the violation up to a sum equal to 12 weeks of the employee's wages or salary.

Employers are required to post notice of the provisions of this act. Willful failure to post this notice could subject an employer to a civil penalty of \$100 per violation.

Leave under this act and leave under the federal act are in addition to any sick or temporary disability leave provided because of pregnancy or childbirth. Leave must be taken concurrently with leave under the federal FMLA.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: Studies have repeatedly shown that the majority of companies do not have problems with the federal Family and Medical Leave Act. FMLA provides unpaid leave to about 60 percent of the workforce. Since 1993, the economic, social, and demographic trends that led to the FMLA have continued and made extending protections even more important. Many states have responded by extending protections to more workers. Dropping the employer threshold to 25 would provide critical protections to 330,000 additional Washington workers. Adding domestic partners recognizes changing family patterns and is already standard practice among many Washington employers. It is difficult to motivate employees by denying them the ability to take time off for illness of themselves or their family members. Family leave takers are more likely to return to work.

Testimony Against: This change in policy should be market driven not policy driven. These changes to family leave will make Washington less attractive to business. If this bill was only to insert the federal FMLA requirements into state law, it could probably be supported by business, but adding the requirement that the bill would apply to employers who have more

than 25 employees and including domestic partners is more difficult for business to support because of the breadth of employers that would now be required to provide family leave.

Who Testified: PRO: Sharon Lobel, Professor of Management, Seattle University; Steve Olson, Olympia Child Care Center; Sharon Ness, United Food and Commercial Workers No. 141; Pam Crone, WSLC; Jerri Wood, Washington State Alliance for Retired Americans; Marlilyn Watkins, Economic Opportunity Institute.

CON: Mark Johnson, Washington Retail Association; Kris Tefft, Association of Washington Business; Carolyn Logue, NFIB.