
HOUSE BILL 1173

State of Washington

59th Legislature

2005 Regular Session

By 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

Read first time 01/18/2005. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to family leave insurance; and adding a new chapter
2 to Title 49 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that, although family
5 leave laws have assisted individuals to balance the demands of the
6 workplace with their family responsibilities, more needs to be done to
7 achieve the goals of family care, work force stability, and economic
8 security. In particular, the legislature finds that many individuals
9 do not have access to family leave laws, and those who do may not be in
10 a financial position to take family leave that is unpaid, and that
11 employer-paid benefits, including family leave and disability benefits,
12 meet only a relatively small part of this need. The legislature
13 declares it to be in the public interest to establish a program that:
14 (1) Allows parents to bond with a newborn or newly placed child, and
15 workers to care for seriously ill family members or recover from their
16 own serious health condition; (2) is in addition to those programs
17 offered by employers; (3) provides limited income support for a
18 reasonable period while an individual is away from work on family

1 leave; and (4) reduces the impact on state income support programs by
2 increasing an individual's ability to provide caregiving services for
3 family members while maintaining an employment relationship.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Application year" means the twelve-month period beginning on
7 the first day of the calendar week in which an individual files an
8 application for family leave insurance benefits and, thereafter, the
9 twelve-month period beginning with the first day of the calendar week
10 in which the individual next files an application for family leave
11 insurance benefits after the expiration of the individual's last
12 preceding application year.

13 (2) "Calendar quarter" has the meaning provided in RCW 50.04.050.

14 (3) "Child" means a person who is:

15 (a) A biological, adopted, or foster child, a stepchild, a legal
16 ward, or a child of a person standing in loco parentis; and

17 (b)(i) Under eighteen years of age; or

18 (ii) Eighteen years of age or older and incapable of self-care
19 because of a mental or physical disability, whether permanent or
20 temporary.

21 (4) "Department" means the department of labor and industries.

22 (5) "Director" means the director of the department of labor and
23 industries.

24 (6) "Domestic partner" means an unmarried person eighteen years of
25 age or older: (a) With whom the individual entered into a close
26 personal relationship when both parties were mentally competent and has
27 maintained a close personal relationship solely with that person for a
28 minimum of six continuous months; (b) with whom the individual shares
29 a regular and permanent residence; (c) with whom the individual has
30 agreed to be jointly responsible for basic living expenses incurred
31 during the domestic partnership; and (d) to whom the individual is not
32 related by blood as would bar marriage.

33 (7) "Employer" means: (a) The same as the definition in RCW
34 50.04.080; and (b) the state and its political subdivisions.

35 (8) "Employment" has the meaning provided in RCW 50.04.100.

36 (9) "Family leave" means leave from employment:

1 (a) To care for a newborn child or adopted or foster child of the
2 individual or the individual's spouse or domestic partner when leave is
3 completed within twelve months after the birth or the placement for
4 adoption or foster care, as applicable;

5 (b) To care for the individual's family member who has a serious
6 health condition; or

7 (c) Because of the individual's serious health condition that makes
8 the individual unable to perform the functions of the individual's
9 position.

10 (10) "Family leave insurance benefits" means the benefits payable
11 under sections 6 and 7 of this act.

12 (11) "Family member" means a child, spouse or domestic partner, or
13 the parent of the individual or individual's spouse or domestic
14 partner.

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

19 (13) "Parent" means a biological or adoptive parent, a stepparent,
20 or an individual who stood in loco parentis to an individual or an
21 individual's spouse or domestic partner when the individual or
22 individual's spouse or domestic partner was a child.

23 (14) "Premium" or "premiums" means payments required by this
24 chapter to be made to the department for the family leave insurance
25 account under section 20 of this act.

26 (15) "Qualifying year" means the first four of the last five
27 completed calendar quarters or the last four completed calendar
28 quarters immediately preceding the first day of the individual's
29 application year.

30 (16) "Regularly working" means the average number of hours per work
31 week that an individual worked in the two quarters of the individual's
32 qualifying year in which total wages were highest.

33 (17) "Serious health condition" means an illness, injury,
34 impairment, or physical or mental condition that involves a period of
35 incapacity or treatment connected with inpatient care, such as an
36 overnight stay, in a hospital, hospice, or residential medical care
37 facility, and a period of incapacity or subsequent treatment or
38 recovery in connection with such inpatient care; or that involves

1 continuing treatment by or under the supervision of a health care
2 provider or a provider of health care services and which includes a
3 period of incapacity, such as an inability to work, attend school, or
4 perform other regular daily activities.

5 NEW SECTION. **Sec. 3.** (1) The department shall establish and
6 administer a family leave insurance program and pay family leave
7 insurance benefits as specified in this chapter.

8 (2) The department shall establish procedures and forms for filing
9 claims for benefits under this chapter. The department shall notify
10 the employer within five business days of a claim being filed under
11 section 4 of this act.

12 (3) The department may require that a claim for benefits under this
13 chapter be supported by a certification issued by the health care
14 provider providing health care to the individual or individual's family
15 member, as applicable.

16 (4) The department shall use information sharing and integration
17 technology to facilitate the disclosure of relevant information or
18 records by the employment security department, so long as an individual
19 consents to such disclosure as required under section 4(4) of this act.

20 (5) Information contained in the files and records pertaining to an
21 individual under this chapter are confidential and not open to public
22 inspection, other than to public employees in the performance of their
23 official duties. However, the individual or an authorized
24 representative of an individual may review the records or receive
25 specific information from the records on the presentation of the signed
26 authorization of the individual. An employer or the employer's duly
27 authorized representative may review the records of an individual
28 employed by the employer in connection with a pending claim. At the
29 department's discretion, other persons may review records when such
30 persons are rendering assistance to the department at any stage of the
31 proceedings on any matter pertaining to the administration of this
32 chapter.

33 (6) The department shall develop and implement an outreach program
34 to ensure that individuals who may be eligible to receive family leave
35 insurance benefits under this chapter are made aware of these benefits.
36 Outreach information shall explain, in an easy to understand format,
37 eligibility requirements, the claims process, weekly benefit amounts,

1 maximum benefits payable, notice and medical certification
2 requirements, reinstatement and nondiscrimination rights,
3 confidentiality, and the relationship between benefits under this
4 chapter and other leave rights and benefits. Outreach information
5 shall be available in English and other primary languages as defined in
6 RCW 74.04.025.

7 NEW SECTION. **Sec. 4.** Beginning on July 2, 2006, family leave
8 insurance benefits are payable to an individual during a period in
9 which the individual is on family leave if the individual:

10 (1) Files a claim for benefits in each week in which the individual
11 is on family leave, and as required by rules adopted by the director;

12 (2) Has been employed for at least six hundred eighty hours in
13 employment during the individual's qualifying year;

14 (3) Establishes an application year. An application year may not
15 be established if the qualifying year includes hours worked before
16 establishment of a previous application year;

17 (4) Consents to the disclosure of information or records deemed
18 private and confidential under chapter 50.13 RCW. Initial disclosure
19 of this information and these records by the employment security
20 department to the department is solely for purposes related to the
21 administration of this chapter. Further disclosure of this information
22 or these records is subject to sections 3(4) and 13(2)(b) of this act;

23 (5) Discloses whether or not he or she owes child support
24 obligations as defined in RCW 50.40.050;

25 (6) Documents that he or she has provided the employer from whom
26 family leave is to be taken with written notice of the individual's
27 intention to take family leave as follows:

28 (a) If the necessity for family leave defined in section 2(9)(a) of
29 this act was foreseeable based on an expected birth or placement,
30 notice was given at least thirty days before the family leave was to
31 begin, stating the anticipated starting date and ending date of the
32 family leave. However, if the date of birth or placement required
33 family leave to begin in less than thirty days or if the date of birth
34 or placement required family leave to be changed or extended, as much
35 notice as practicable was given; and

36 (b) If the necessity for family leave defined in section 2(9) (b)
37 or (c) of this act was foreseeable based on planned medical treatment:

1 (i) Notice was given at least thirty days before the family leave
2 was to begin, stating the anticipated starting date and ending date of
3 the family leave. However, if the date of the treatment required
4 family leave to begin in less than thirty days or if the date of the
5 treatment required family leave to be changed or extended, as much
6 notice as practicable was given; and

7 (ii) The individual made reasonable efforts to schedule the
8 treatment so as not to disrupt unduly the operations of the employer,
9 subject to the approval of the health care provider of the individual
10 or family member, as applicable; and

11 (7) Is not receiving benefits under the unemployment compensation,
12 industrial insurance, crime victims' compensation, or disability
13 insurance laws of this state, any other state, or the United States.

14 NEW SECTION. **Sec. 5.** An individual is disqualified from family
15 leave insurance benefits beginning with the first day of the calendar
16 week, and continuing for the next fifty-two consecutive weeks, in which
17 the individual:

18 (1) Willfully made a false statement or misrepresentation regarding
19 a material fact, or willfully failed to report a material fact, to
20 obtain benefits under this chapter; or

21 (2) With respect to family leave defined in section 2(9)(c) of this
22 act is suffering from a serious health condition resulting from the
23 individual's perpetration of a gross misdemeanor or felony.

24 NEW SECTION. **Sec. 6.** (1) The maximum number of weeks during which
25 family leave insurance benefits are payable in an application year is
26 five weeks. However, benefits are not payable during a waiting period
27 consisting of the first five work days of family leave taken in an
28 application year with respect to a particular type of family leave,
29 whether the first five work days of family leave are employer paid or
30 unpaid.

31 (2)(a) The first payment of benefits must be made to an individual
32 within two weeks after the claim is filed or the family leave began,
33 whichever is later, and subsequent payments must be made semimonthly
34 thereafter.

35 (b) The payment of benefits under this chapter shall not be
36 considered a binding determination of the obligations of the department

1 under this chapter. The acceptance of compensation by the individual
2 shall likewise not be considered a binding determination of his or her
3 rights under this chapter. Whenever any payment of benefits under this
4 chapter has been made and timely appeal therefrom has been made where
5 the final decision is that the payment was improper, the individual
6 shall repay it and recoupment may be made from any future payment due
7 to the individual on any claim under this chapter. The director may
8 exercise his or her discretion to waive, in whole or in part, the
9 amount of any such payments where the recovery would be against equity
10 and good conscience.

11 (c) If an individual dies before he or she receives a payment of
12 benefits, the payment shall be made to the surviving spouse or domestic
13 partner, or the child or children if there is no surviving spouse or
14 domestic partner. If there is no surviving spouse or domestic partner,
15 and no child or children, the payment shall be made by the department
16 and distributed consistent with the terms of the decedent's will or, if
17 the decedent dies intestate, consistent with the terms of RCW
18 11.04.015.

19 (3) Benefits are not payable and waiting period credits are not
20 earned under this chapter for any weeks in which compensation is paid
21 or payable to the individual under Title 50 RCW or similar law of
22 another state or the United States, or under RCW 51.32.060 or 51.32.090
23 or another state or federal workers' compensation law.

24 NEW SECTION. **Sec. 7.** The amount of family leave insurance
25 benefits shall be determined as follows:

26 (1) For weeks of family leave beginning before July 1, 2007, the
27 weekly benefit shall be two hundred fifty dollars per week for an
28 individual who at the time of beginning family leave was regularly
29 working forty hours or more per week. By June 30, 2007, and by each
30 subsequent June 30th, the department shall calculate to the nearest
31 dollar an adjusted maximum weekly benefit to account for inflation
32 using the consumer price index for urban wage earners and clerical
33 workers, CPI-W, or a successor index, for the twelve completed calendar
34 months before each June 30th as calculated by the United States
35 department of labor. The adjusted maximum weekly benefit takes effect
36 for weeks of family leave beginning after the relevant June 30th.

1 (2) If an individual who at the time of beginning family leave was
2 regularly working forty hours or more per week is on family leave for
3 less than forty hours but at least eight hours in a week, the
4 individual's weekly benefit shall be .025 times the maximum weekly
5 benefit times the number of hours of family leave taken in the week.
6 Benefits are not payable for less than eight hours of family leave
7 taken in a week.

8 (3) For an individual who at the time of beginning family leave was
9 regularly working less than forty hours per week, the department shall
10 calculate a prorated schedule for a weekly benefit amount and a minimum
11 number of hours of family leave that must be taken in a week for
12 benefits to be payable, with the prorated schedule based on the amounts
13 and the calculations specified under subsections (1) and (2) of this
14 section.

15 (4) If an individual discloses that he or she owes child support
16 obligations under section 4 of this act and the department determines
17 that the individual is eligible for benefits, the department shall
18 notify the applicable state or local child support enforcement agency
19 and deduct and withhold an amount from benefits in a manner consistent
20 with RCW 50.40.050.

21 (5) If the internal revenue service determines that family leave
22 insurance benefits under this chapter are subject to federal income tax
23 and an individual elects to have federal income tax deducted and
24 withheld from benefits, the department shall deduct and withhold the
25 amount specified in the federal internal revenue code in a manner
26 consistent with section 8 of this act.

27 NEW SECTION. **Sec. 8.** (1) If the internal revenue service
28 determines that family leave insurance benefits under this chapter are
29 subject to federal income tax, the department must advise an individual
30 filing a new claim for family leave insurance benefits, at the time of
31 filing such claim, that:

32 (a) The internal revenue service has determined that benefits are
33 subject to federal income tax;

34 (b) Requirements exist pertaining to estimated tax payments;

35 (c) The individual may elect to have federal income tax deducted
36 and withheld from the individual's payment of benefits at the amount
37 specified in the federal internal revenue code; and

1 (d) The individual is permitted to change a previously elected
2 withholding status.

3 (2) Amounts deducted and withheld from benefits must remain in the
4 family leave insurance account until transferred to the federal taxing
5 authority as a payment of income tax.

6 (3) The director shall follow all procedures specified by the
7 federal internal revenue service pertaining to the deducting and
8 withholding of income tax.

9 NEW SECTION. **Sec. 9.** If family leave insurance benefits are paid
10 erroneously or as a result of willful misrepresentation, or if a claim
11 for family leave benefits is rejected after benefits are paid, RCW
12 51.32.240 shall apply, except that appeals are governed by section 14
13 of this act, penalties are paid into the family leave insurance
14 account, and the department shall seek repayment of benefits from the
15 recipient.

16 NEW SECTION. **Sec. 10.** During a period in which an individual
17 receives family leave insurance benefits under this chapter, the
18 individual is entitled to family leave and, at the established ending
19 date of leave, to be reinstated in his or her position with the
20 employer from whom leave was taken subject to the following:

21 (1)(a) An employer may require that family leave for which an
22 individual is receiving or received family leave insurance benefits
23 under this chapter be taken concurrently with leave under the federal
24 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107
25 Stat. 6), chapter 49.78 RCW, or other applicable federal, state, or
26 local law, except that:

27 (i) Family leave taken for sickness or temporary disability because
28 of pregnancy or childbirth is in addition to leave under the federal
29 family and medical leave act of 1993, chapter 49.78 RCW, or other
30 applicable federal, state, or local law.

31 (ii) Family leave during which the individual is receiving or
32 received family leave insurance benefits under this chapter is in
33 addition to leave from employment during which benefits are paid or are
34 payable under RCW 51.32.060 or 51.32.090 or another state or federal
35 workers' compensation law and that is designated as leave under the

1 federal family and medical leave act of 1993, chapter 49.78 RCW, or
2 other applicable federal, state, or local law.

3 (b) If an employer requires that family leave for which an
4 individual is receiving or received benefits under this chapter be
5 taken concurrently with leave under the federal family and medical
6 leave act of 1993, chapter 49.78 RCW, or other applicable federal,
7 state, or local law, the employer must give all individuals in its
8 employ written notice of the requirement.

9 (2)(a) If the individual is entitled, on return from family leave
10 under this chapter, to reinstatement under the federal family and
11 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6),
12 chapter 49.78 RCW, or other applicable federal, state, or local law,
13 other than this chapter, reinstatement is required as provided under
14 the applicable law most favorable to the individual.

15 (b)(i) If the individual is not entitled to reinstatement on return
16 from family leave under (a) of this subsection, the individual is
17 entitled, upon return from leave under this chapter, to be reinstated:

18 (A) In the same position held by the individual when the leave
19 commenced;

20 (B) In a position with equivalent benefits and pay at a workplace
21 within twenty miles of the individual's workplace when leave commenced;
22 or

23 (C) If the employer's circumstances have so changed that the
24 individual cannot be reinstated in the same position, or a position of
25 equivalent pay and benefits, the individual shall be reinstated in any
26 other position which is vacant and for which the individual is
27 qualified.

28 (ii) The entitlement under this subsection (2)(b) is subject to
29 bona fide changes in compensation or work duties, and does not apply
30 if:

31 (A) The individual's position is eliminated by a bona fide
32 restructuring or reduction-in-force;

33 (B) The individual's workplace is permanently or temporarily shut
34 down for at least thirty days;

35 (C) The individual's workplace is moved to a location at least
36 sixty miles from the location of the workplace when leave commenced;

37 (D) An individual on family leave takes another job; or

1 (E) The individual fails to return on the established ending date
2 of leave.

3 (3) An individual who has been on family leave while receiving
4 family leave insurance benefits under this chapter shall not lose any
5 employment benefit, including seniority or pension rights, accrued
6 before the date that family leave commenced. However, this chapter
7 does not entitle an individual to accrue employment benefits during a
8 period of family leave or to a right, benefit, or position of
9 employment other than a right, benefit, or position to which the
10 individual would have been entitled had the individual not taken family
11 leave.

12 (4) This section shall be enforced as provided in RCW 49.78.005(2).

13 NEW SECTION. **Sec. 11.** (1) This chapter does not limit an
14 individual's right to leave from employment under other laws,
15 collective bargaining agreements, or employer policy, as applicable,
16 except as provided in this chapter.

17 (2) If an employer provides paid family leave through disability
18 insurance or any other means, the individual may elect whether first to
19 use the paid family leave or to receive family leave insurance benefits
20 under this chapter. An individual may not be required to use the
21 individual's paid family leave to which the individual is otherwise
22 entitled before receiving benefits under this chapter.

23 NEW SECTION. **Sec. 12.** (1) An employer of individuals not covered
24 by this chapter or a self-employed person, including a sole proprietor,
25 partner, or joint venturer, may elect coverage under this chapter for
26 all individuals in its employ for an initial period of not less than
27 three years or a subsequent period of not less than one year
28 immediately following another period of coverage. The employer or
29 self-employed person must file a notice of election in writing with the
30 director, as required by the department. The election becomes
31 effective on the date of filing the notice.

32 (2) An employer or self-employed person who has elected coverage
33 may withdraw from coverage within thirty days after the end of the
34 three-year period of coverage, or at such other times as the director
35 may prescribe by rule, by filing written notice with the director, such
36 withdrawal to take effect not sooner than thirty days after filing the

1 notice. Within five days of filing written notice of the withdrawal
2 with the director, an employer must provide written notice of the
3 withdrawal to all individuals in the employer's employ.

4 (3) The department may cancel elective coverage if the employer or
5 self-employed person fails to make required payments or reports. The
6 department may collect due and unpaid premiums and may levy an
7 additional premium for the remainder of the period of coverage. The
8 cancellation shall be effective no later than thirty days from the date
9 of the notice in writing advising the employer or self-employed person
10 of the cancellation. Within five days of receiving written notice of
11 the cancellation from the director, an employer must provide written
12 notice of the cancellation to all individuals in the employer's employ.

13 NEW SECTION. **Sec. 13.** (1) In the form and at the times specified
14 by the director, an employer shall make reports, furnish information,
15 and remit premiums as required by section 19 of this act to the
16 department. If the employer is a temporary help company that provides
17 employees on a temporary basis to its customers, the temporary help
18 company is considered the employer for purposes of this section.
19 However, if the temporary help company fails to remit the required
20 premiums, the customer to whom the employees were provided is liable
21 for paying the premiums.

22 (2)(a) An employer must keep at his or her place of business a
23 record of employment from which the information needed by the
24 department for purposes of this chapter may be obtained. This record
25 shall at all times be open to the inspection of the director or
26 department employees designated by the director.

27 (b) Information obtained from employer records under this chapter
28 is confidential and not open to public inspection, other than to public
29 employees in the performance of their official duties. However, an
30 interested party shall be supplied with information from employer
31 records to the extent necessary for the proper presentation of the case
32 in question. An employer may authorize inspection of its records by
33 written consent.

34 (3) The requirements relating to the assessment and collection of
35 family leave insurance premiums are the same as the requirements
36 relating to the assessment and collection of industrial insurance

1 premiums under Title 51 RCW, including but not limited to penalties,
2 interest, and department lien rights and collection remedies. These
3 requirements apply to:

4 (a) An employer that fails under this chapter to make the required
5 reports, or fails to remit the full amount of the premiums when due;

6 (b) An employer that willfully makes a false statement or
7 misrepresentation regarding a material fact, or willfully fails to
8 report a material fact, to avoid making the required reports or
9 remitting the full amount of the premiums when due under this chapter;

10 (c) A public entity that engages in work or lets a contract for
11 work, in the manner specified in RCW 51.12.050;

12 (d) A person, firm, or corporation who lets a contract for work, in
13 the manner specified in RCW 51.12.070;

14 (e) A successor, as defined in RCW 51.08.177, in the manner
15 specified in RCW 51.16.200; and

16 (f) An officer, member, manager, or other person having control or
17 supervision of payment and/or reporting of family leave insurance, or
18 who is charged with the responsibility for the filing of returns, in
19 the manner specified in RCW 51.48.055.

20 (4) Notwithstanding subsection (3) of this section, appeals are
21 governed by section 14 of this act.

22 NEW SECTION. **Sec. 14.** (1) A person aggrieved by a decision of the
23 department under this chapter must file a notice of appeal with the
24 director, by mail or personally, within thirty days after the date on
25 which a copy of the department's decision was communicated to the
26 person. Upon receipt of the notice of appeal, the director shall
27 request the assignment of an administrative law judge in accordance
28 with chapter 34.05 RCW to conduct a hearing and issue a proposed
29 decision and order. The hearing shall be conducted in accordance with
30 chapter 34.05 RCW.

31 (2) The administrative law judge's proposed decision and order
32 shall be final and not subject to further appeal unless, within thirty
33 days after the decision is communicated to the interested parties, a
34 party petitions for review by the director. If the director's review
35 is timely requested, the director may order additional evidence by the
36 administrative law judge. On the basis of the evidence before the
37 administrative law judge and such additional evidence as the director

1 may order to be taken, the director shall render a decision affirming,
2 modifying, or setting aside the administrative law judge's decision.
3 The director's decision becomes final and not subject to further appeal
4 unless, within thirty days after the decision is communicated to the
5 interested parties, a party files a petition for judicial review as
6 provided in chapter 34.05 RCW. The director is a party to any judicial
7 action involving the director's decision and shall be represented in
8 the action by the attorney general.

9 (3) If, upon administrative or judicial review, the final decision
10 of the department is reversed or modified, the administrative law judge
11 or the court in its discretion may award reasonable attorneys' fees and
12 costs to the prevailing party. Attorneys' fees and costs owed by the
13 department, if any, are payable from the family leave insurance
14 account.

15 NEW SECTION. **Sec. 15.** An employer, temporary help company,
16 employment agency, employee organization, or other person may not
17 discharge, expel, or otherwise discriminate against a person because he
18 or she has filed or communicated to the employer an intent to file a
19 claim, a complaint, or an appeal, or has testified or is about to
20 testify or has assisted in any proceeding, under this chapter, at any
21 time, including during the waiting period described in section 6 of
22 this act and the period in which the person receives family leave
23 insurance benefits under this chapter. This section shall be enforced
24 as provided in RCW 51.48.025.

25 NEW SECTION. **Sec. 16.** (1) This chapter is not intended to
26 discourage employers from adopting or retaining policies that provide
27 additional benefits to individuals to address family leave needs.

28 (2) This chapter is not to be construed to diminish an employer's
29 obligation to comply with a collective bargaining agreement or an
30 employment benefit program or plan that provides greater benefits to
31 individuals than the family leave insurance benefits provided under
32 this chapter.

33 (3) An agreement by an individual to waive his or her rights under
34 this chapter is void as against public policy.

35 (4) The benefits provided to individuals under this chapter may not

1 be diminished by a collective bargaining agreement or an employment
2 benefit program or plan entered into or renewed after the effective
3 date of this section.

4 NEW SECTION. **Sec. 17.** This chapter does not create a continuing
5 entitlement or contractual right. The legislature reserves the right
6 to amend or repeal all or part of this chapter at any time, and a
7 benefit or other right granted under this chapter exists subject to the
8 legislature's power to amend or repeal this chapter. There is no
9 vested private right of any kind against such amendment or repeal.

10 NEW SECTION. **Sec. 18.** The director may adopt rules as necessary
11 to implement this chapter. In adopting rules, the director shall
12 maintain consistency with the rules adopted to implement the federal
13 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107
14 Stat. 6), to the extent such rules are not in conflict with this
15 chapter.

16 NEW SECTION. **Sec. 19.** (1)(a) Beginning on October 1, 2005, for
17 each individual, each employer shall pay a premium of two cents per
18 hour worked, up to a maximum of forty hours per week, to the department
19 in the manner and at such intervals as the department directs for
20 deposit in the family leave insurance account. In the payment of
21 premiums, a fractional part of a cent shall be disregarded unless it
22 amounts to one-half cent or more, in which case it shall be increased
23 to one cent.

24 (b) The director shall adjust the amount of the premium from time
25 to time to ensure that the amount is the lowest rate necessary to pay
26 family leave insurance benefits and administrative costs, and maintain
27 actuarial solvency in accordance with recognized insurance principles,
28 of the family leave insurance program on a current basis, and to repay
29 loaned funds from the supplemental pension fund, if any, as required in
30 sections 21 and 22 of this act.

31 (2)(a) Except as provided in (b) of this subsection, one-half of
32 the amount assessed for the family leave insurance account may be
33 retained from the earnings of each individual.

34 (b) None of the amount assessed for the family leave insurance

1 account may be retained from the earnings of individuals covered under
2 RCW 51.16.210.

3 NEW SECTION. **Sec. 20.** The family leave insurance account is
4 created in the custody of the state treasurer. All receipts from the
5 premium imposed under section 19 of this act or the penalties imposed
6 under section 13 of this act must be deposited in the account.
7 Expenditures from the account may be used only for the purposes of the
8 family leave insurance program. Only the director or the director's
9 designee may authorize expenditures from the account. The account is
10 subject to the allotment procedures under chapter 43.88 RCW, but an
11 appropriation is not required for benefit payments.

12 NEW SECTION. **Sec. 21.** If necessary to ensure that money is
13 available in the family leave insurance account for the administration
14 of the family leave insurance program and the payment of benefits under
15 this chapter, the director may, from time to time, lend funds from the
16 supplemental pension fund to the family leave insurance account. These
17 loaned funds may be expended solely for the purposes of administering
18 the program and paying benefits under this chapter. The director shall
19 repay the supplemental pension fund, plus its proportionate share of
20 earnings from investment of moneys in the supplemental pension fund
21 during the loan period, from the family leave insurance account within
22 three months of the date of the loan.

23 NEW SECTION. **Sec. 22.** Beginning July 1, 2007, the department
24 shall report to the legislature by July 1st of each year on projected
25 and actual program participation, premium rates, fund balances, and
26 outreach efforts.

27 NEW SECTION. **Sec. 23.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act

1 constitute a new chapter in Title 49 RCW.

--- END ---