

HOUSE BILL REPORT

SB 6447

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to allowing unpaid leaves of absence for military personnel needs.

Brief Description: Allowing unpaid leaves of absence for military personnel needs.

Sponsors: Senators Hobbs, Jacobsen, Shin and Rasmussen.

Brief History:

Committee Activity:

Commerce & Labor: 2/26/08, 2/28/08 [DPA].

Brief Summary of Bill
(As Amended by House Committee)

- Provides that, during periods of military conflict, employees are entitled to up to 15 days of unpaid leave before their spouse is deployed or while their spouse is on leave from deployment.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

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

Staff: Jill Reinmuth (786-7134).

Background:

Federal law and laws in some other states provide that certain employees are entitled to leave related to a family member's military service. No laws in Washington address such leave.

Federal Law

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The federal National Defense Authorization Act for Fiscal Year 2008 amended the federal Family and Medical Leave Act to provide that eligible employees are entitled to certain "military family leave."

Military family leave includes up to 26 weeks of unpaid leave in a 12-month period to care for family members injured while on active duty in the Armed Forces. (This provision became effective on January 28, 2008.) It also includes up to 12 weeks of unpaid leave in a 12-month period for any qualifying exigencies arising out of the fact that family members are on active duty in the Armed Forces in support of contingency operations. (This provision is not operative until the federal Secretary of Labor determines, by regulation, the qualifying exigencies that will entitle an eligible employee to take leave.)

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, or a public agency.

Laws in Other States

Laws in at least seven states (California, Illinois, Indiana, Maine, Minnesota, Nebraska, and New York) provide that eligible employees are entitled to limited unpaid leave related to a family member's military service.

Summary of Amended Bill:

The state Military Family Leave Act (Act) is created. During periods of military conflict, employees who are spouses of members of the Armed Forces, National Guard, or Reserves who have been notified of a call or order to active duty or have been deployed are entitled to up to 15 days of unpaid leave from employment. Military family leave may be taken before deployment or during leave from deployment.

An "employee" is a person who performs service for hire for an employer for an average of 20 or more hours per week. "Employee" includes individuals employed at any site owned or operated by an employer, but not independent contractors.

An "employer" is any person or business entity that engages in business in the state. "Employer" also means the state and any unit of local government.

A "period of military conflict" is a period of war declared by the President or Congress or a period in which members of the Reserves are ordered to active duty.

The employee is entitled to be restored to a position of employment and to continue benefits in the same manner as in the state Family Leave Law. (The state Family Leave Law specifies that, upon returning from leave, an employee is entitled to be restored to: (1) the position he

or she held when leave started; or (2) 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.)

The employee must provide his or her employer with notice of his or her intention to take military family leave. This notice must be provided within five business days of receiving official notice of a call or order to active duty or of leave from deployment.

The employer shall not engage in prohibited acts as specified in the state Family Leave Law. (The state Family Leave Law prohibits an employer from discharging or discriminating against any employee who takes leave.)

The employee may elect to substitute accrued leave for any part of military family leave.

The Department of Labor and Industries (Department) is required to administer the Act, and may adopt rules as necessary.

The Act shall be enforced as provided in the state Family Leave Law. (The state Family Leave Law requires the Department to investigate complaints of violations. An employer found to have violated the state Family Leave Law after an investigation is subject to a civil penalty of at least \$1,000 per violation. These penalties are collected by the Department and deposited into the Family and Medical Leave Enforcement Account. An employee may also bring suit directly against an employer for violations, and may 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.)

Amended Bill Compared to Original Bill:

The time when military family leave may be taken is changed to include before deployment. A provision specifying that military family leave is in addition to other leave is deleted. A provision specifying that an employee may elect to substitute accrued leave for military family leave is added. Various provisions are the same as in the state Family Leave Law, including job restoration, benefit continuation, prohibited acts, and enforcement.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) For service members, the two-week rest and recuperation leave from deployment is a critical time. Unfortunately, spouses may not be able to take leave from employment at that time. Some employees are terrified to ask for time off. They have heard horror stories of employees who ask for leave and whose employers begrudgingly give them time off. These employees give up their spouses for 15 months. It should not be too much to ask for 15 days.

The last time I saw my husband healthy and alive was during his leave from deployment. He was later shot, made a quadriplegic, and died of his injuries. I was lucky because I was able to take leave from my job to be with him during his leave from deployment.

(Information only) The Department has rulemaking authority.

(Opposed) None.

Persons Testifying: (In support) Senator Hobbs, prime sponsor; Katherine White Tudor; and Stacia Jensen.

(Information only) Suchi Sharma, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: (In support) Lena Madden.