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**Commerce & Labor Committee**

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**HB 2665**

**Brief Description:** Implementing the recommendations of the joint legislative task force on family leave insurance.

**Sponsors:** Representatives Dickerson, Conway, Hasegawa, Williams, Chase, Moeller, Simpson and Darneille.

**Brief Summary of Bill**

- Directs the Employment Security Department to administer the family leave insurance program.
- Specifies that the job protection provisions must be enforced by the Department of Labor and Industries.
- Modifies the family leave insurance program consistent with certain task force recommendations on government efficiencies, unemployment compensation, and other matters.

**Hearing Date:** 1/18/08

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

**Background:**

In 2007 the Legislature enacted Engrossed Second Substitute Senate Bill 5659 relating to family and medical leave insurance. A framework for a family leave insurance program was established. A joint legislative task force was created to study the establishment of the family leave insurance program, including financing and administration.

The framework included benefits of \$250 per week for up to five weeks for individuals on leave for the birth or placement of a child. It also included job protection following leave for individuals who work for an employer with more than 25 employees for at least 12 months, and who have worked for at least 1,250 hours over the previous 12 months.

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*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 task force was directed to study the following: financing for benefits and administrative costs; program implementation and administration; government efficiencies which improve program administration and reduce program costs; and impacts, if any, on the unemployment compensation system, and options for mitigating such impacts.

The task force was required to report its findings and recommendations, including recommendations as to the specific manner in which benefits and administrative costs should be financed as well as proposed legislation, to the Legislature.

The majority of the task force agreed to recommend the following to the Legislature:

#### Financing of Benefits and Administrative Costs

1. The General Fund-State should be the source used to finance benefits and administrative costs during the first two biennia of the family leave insurance program.

#### Implementation and Administration

2. Except as specified in Recommendation #3 below, the Employment Security Department should be the agency directed to administer the family leave insurance program.
3. The Department of Labor and Industries should be the agency directed to enforce the labor standard set forth in RCW 49.86.090 (requiring restoration to employment for certain individuals).

#### Government Efficiencies

4. An administrative law judge should not be authorized to award attorneys' fees and costs to a prevailing party if, upon administrative review, the final decision of the agency administering the family leave insurance program is reversed or modified.
5. An individual should not be required to file a claim for benefits in each week in which the individual is on family leave.
6. An individual should be allowed to file a claim for benefits after the individual begins to take family leave, so long as the claim is timely.
7. For benefits to be payable, an applicant should not be required to:
  - a. Verify the birth of a child or the placement of a child for adoption. (Instead, the applicant should be required to attest to the birth or adoption. The agency administering the family leave insurance program should subsequently use a computer cross-match to verify the birth or adoption.)
  - b. Document that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave. (Instead, the applicant should attest that notification has occurred, if applicable.)
8. The agency administering the family leave insurance program should not be required to give an individual the option to elect to have federal income tax deducted and withheld from benefits.

9. The agency administering the family leave insurance program should be given warrant, garnishment, lien, and other collection authority similar to collection authority available to the Employment Security Department for the unemployment compensation program and the Department of Labor and Industries for the workers' compensation program.

#### Unemployment Compensation

10. The Employment Security Department should begin tracking the impacts of the family leave insurance program on the unemployment compensation system and report to the Legislature at a later date.
11. A contribution paying base year employer should be allowed to request relief of charges that result from payment to an individual who:
  - a. worked for the employer for six weeks or less; and
  - b. is laid off at the end of temporary employment when that individual has temporarily replaced a permanent employee taking family leave as defined in Chapter 49.86 RCW and the layoff is due to the return of that permanent employee.

#### Other

12. The agency administering the family leave insurance program should establish an advisory committee to aid the agency in formulating policies and discussing problems related to the administration of the program.
13. RCW 49.86.090 (requiring restoration to employment for certain individuals) should be amended to specify that it applies only if the employer from whom the individual takes family leave employs more than 25 employees "for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year."
14. Chapter 49.86 RCW (establishing the family leave insurance program) should be amended to address concerns unique to the agricultural, construction, and staffing company sectors.
15. RCW 49.86.210 (reports) should be amended to require that benchmarks and reporting requirements be created to assess the effectiveness of the family leave insurance program over time.

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

The family leave insurance program is modified consistent with certain task force recommendations on implementation and administration of the program, government efficiencies, unemployment compensation, and other matters.

#### Implementation and Administration

The Employment Security Department is directed to administer the family leave insurance program. Changes consistent with this direction are made throughout the family leave insurance program.

#### Government Efficiencies

Eligibility requirements are modified. Individuals must file claims for benefits, but they need not file weekly claims. Individuals must attest that they provided their employers with written notice of their intent to take family leave, but they need not document that such notice has been provided. Individuals are not prohibited from filing claims for benefits after beginning to take family leave.

Several other efficiencies are adopted. The Employment Security Department is not required to give individuals the option to have federal income tax deducted from benefits and transferred to the federal taxing authority. Administrative law judges are not authorized to award attorneys' fees and costs to prevailing parties if administrative agency decisions are reversed or modified. The Employment Security Department must issue overpayment assessments and may file warrants to recover overpayments.

### Unemployment Compensation

The Employment Security Department is required to conduct a study of the impacts, if any, of the family leave insurance program on the unemployment compensation system. A report on the study is due by December 1, 2011.

Employers may request relief of charges that result from payment of unemployment benefits to temporary replacement employees who work for an employer for six weeks or less and who are laid off due to the return of permanent employees.

### Other

The Commissioner of the Employment Security Department is required to appoint a state advisory committee. The committee must aid the Commissioner in formulating policies related to program administration and of assuring consistency with program intent and impartiality and freedom from political influence in the solution of issues. Committee members must be reimbursed for travel expenses, but otherwise serve without compensation.

The scope of the annual program report is expanded. The report must include benefits paid, information on program participants, and the costs of providing benefits.

### Job Protection

The Department of Labor and Industries is required to enforce the job protection provisions.

The requirement that an employer employ more than 25 employees is modified. The employer must employ more than 25 employees "for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year."

An exception for certain individuals taking leave from staffing companies is added. The job protection provisions do not apply if an individual takes leave from employment with a staffing company and the individual is temporarily assigned to perform work at or services for another organization to support or supplement the other organization's workforces, or to provide assistance in certain special work situations.

**Rules Authority:** The bill authorizes the Commissioner of the Employment Security Department to adopt rules necessary to implement the family leave insurance program. The Director of the Department of Labor and Industries may adopt rules necessary to implement the job protection

provisions. The Commissioner and the Director must maintain consistency with rules adopted to implement the federal Family and Medical Leave Act and the state Family Leave Law.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/13/08.

**Effective Date:** The following take effect 90 days after adjournment of session in which bill is passed.: section 11 (account), section 12 (loan), section 15 (statewide advisory committee), section 16 (study of impacts on unemployment compensation system), section 17 (noncharging of certain unemployment benefits), and sections 18 and 19 (severability.)

The following take effect July 1, 2008: section 1 (definitions), sections 2, 4, 8, and 9 (administering agency), section 3 (eligibility), sections 5 and 6 (federal income tax), section 7 (job protection), section 10 (rulemaking), section 13 (reports), and section 14 (overpayments).