

HOUSE BILL REPORT

HB 3305

As Reported by House Committee On:

Commerce & Labor

Appropriations

Title: An act relating to implementing the family leave insurance program, but only with respect to designating agencies to administer and enforce the program, adopting government efficiencies to improve program administration and reduce program costs, tracking and mitigating any impacts on the unemployment compensation system, addressing the manner in which leave is coordinated, and implementing other task force recommendations.

Brief Description: Implementing the family leave insurance program, but only with respect to designating agencies to administer and enforce the program, adopting government efficiencies to improve program administration and reduce program costs, tracking and mitigating any impacts on the unemployment compensation system, addressing the manner in which leave is coordinated, and implementing other task force recommendations.

Sponsors: Representatives Dickerson, Conway, Green, Appleton and Sells.

Brief History:

Committee Activity:

Commerce & Labor: 1/29/08, 1/31/08 [DPS];

Appropriations: 2/8/08, 2/11/08 [DPS(CL)].

Brief Summary of Substitute 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 with respect to government efficiencies, unemployment compensation, and certain task force recommendations.

HOUSE COMMITTEE ON COMMERCE & LABOR

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. 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:

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.

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 statute (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.); and
 - (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 Substitute Bill:

The family leave insurance program is modified with respect to implementation and administration of the program, government efficiencies, unemployment compensation, and certain task force recommendations.

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 provide their employers with written notice of their intent to take family leave, and attest that written notice has been provided. Individuals are not prohibited from filing claims for benefits after beginning to take family leave, but must do so in the six-week period beginning on the first day of the calendar week in which they are on leave. Individuals may receive benefits only in the 12-month period beginning on the date of birth or adoption.

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 within 75 miles of the employee's worksite."

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.

An exception for employees hired for specific terms or only to work on discrete projects is also added. The job restoration provisions do not apply to such an employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee.

Substitute Bill Compared to Original Bill:

The definition of "application year" is modified to limit the period in which an individual may receive family leave insurance benefits to the 12-month period beginning on the date of birth or adoption. The alternate qualifying year (last four completed calendar quarters) is used only if eligibility is not established using the qualifying year (first four of last five completed calendar quarters). Claims for benefits must be filed in the six-week period beginning on the first day of the calendar week in which individuals are on family leave. Individuals must provide their employers with written notice of their intention to take family leave. Payments

of benefits are made bi-weekly (instead of semi-monthly). The number of employees employed by an employer is the number employed within 75 miles of the employee's worksite. The job restoration provisions do not apply if employees are hired for a specific term or to perform work on a discrete project.

Appropriation: None.

Fiscal Note: Requested on January 31, 2008.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 1, relating to definitions; sections 2, 4, 8, and 9, relating to administering agency; section 3, relating to eligibility; sections 5 and 6, relating to federal income tax; section 7, relating to job protection; section 10, relating to rulemaking; section 13, relating to reports; and section 14, relating to overpayments, which take effect July 1, 2008.

Staff Summary of Public Testimony:

(In support of HB 2665) This bill presents most of the Task Force recommendations to the Legislature. The recommendations streamline the family leave insurance program and lower administrative costs. There continues to be work on some outstanding issues.

This bill fulfills the promise of last year's bill. Adopting this bill will ensure that the family leave insurance program begins on schedule.

Our families and children need this bill. It will decrease infant mortality rates, enhance health outcomes, improve early learning, lower health care costs, and boost business productivity. These short-term investments will result in long-term gains.

We are unequivocal in our view that family leave insurance is appropriately administered by the public sector and look forward to working with the Employment Security Department.

We support relief of unemployment compensation benefit charges related to temporary replacement workers, but strongly oppose any changes to benefits themselves.

Rules related to the program will be consistent with the Federal Family and Medical Leave Act.

(In support of Section 7 of HB 2665) The exception for the staffing industry is appreciated.

(In support of HB 3305) There is agreement on some issues.

(Concerns to HB 2665) This bill does not address certain issues. These issues include coordination of leave and benefits, voluntary quits for purposes of unemployment compensation, and employers that already offer comparable or better leave programs. In addition, a source of funding needs to be identified, rules need to be consolidated, and reporting language needs to be improved.

Workers could receive family leave insurance benefits and continue to work.

Undocumented workers could receive benefits.

Even though there is not an intent to stack, it is possible to do so. These unintended consequences could be fixed by putting all leave provisions in the state leave law.

We oppose any direct or indirect taxes on employers.

Language from federal regulations with respect to reinstatement of seasonal workers is adequate.

(Neutral with concerns to HB 3305) There should be answers to questions about funding before other issues are addressed.

(Opposed to HB 2665) Only requiring attestation of written notice is a concern. Verification of written notice would be preferable.

(Opposed to HB 3305) There continue to be concerns about stacking of leave, seasonal employment, unemployment insurance, and funding.

Persons Testifying: (In support of HB 2665) Representative Dickerson, prime sponsor; Katie Bethell, MomsRising.org; Robby Stern, Washington State Labor Council; and Marilyn Watkins, Economic Opportunity Institute.

(In support of Section 7 of HB 2665) Holly Chisa, Staffing Association of Washington.

(In support of HB 3305) Marilyn Watkins, Economic Opportunity Institute; and Robby Stern, Washington State Labor Council.

(Concerns to HB 2665) Kris Tefft, Association of Washington Business; Dan Fazio, Washington Farm Bureau; Troy Nichols, National Federation of Independent Business; and Carl Gipson, Washington Policy Center.

(Neutral with concerns to HB 3305) Scott Dilley, Evergreen Freedom Foundation.

(Opposed to HB 2665) Carolyn Logue, Washington Food Industry.

(Opposed to HB 3305) Dan Fazio, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Kretz, McDonald, Priest, Ross, Schmick and Walsh.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

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, except section 1, relating to definitions; sections 2, 4, 8, and 9, relating to administering agency; section 3, relating to eligibility; sections 5 and 6, relating to federal income tax; section 7, relating to job protection; section 10, relating to rulemaking; section 13, relating to reports; and section 14, relating to overpayments, which take effect July 1, 2008.

Staff Summary of Public Testimony:

(In support) Last year, the Legislature enacted a family leave insurance program that will improve the health and well-being of every child in the state and will have long-term payoffs for children and working families. The administrative portion of this program will run at about 14 percent of benefits. This is less than the average administrative cost of workers' compensation programs throughout the country. This bill incorporates consensus recommendations from the work of the task force.

(With concerns) The Committee should take a second look at this program. There is concern about the funding source for family leave insurance. In the past, funding has been linked to the workers' compensation Supplemental Pension Fund and this program should not latch onto this account. There are also concerns about the complexity of funding sources and the sustainability of this program over the long term. This bill will affect less than 1 percent of the workforce. There are lots of full-time equivalents and bureaucracy with this program, and it does not fully consider the cost to workers or the ability of beneficiaries to stack benefits.

(Opposed) None.

Persons Testifying: (In support) Marilyn Watkins, Economic Opportunity Institute.

(With concerns) Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.