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**Commerce & Labor Committee**

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**E2SSB 5659**

**Brief Description:** Establishing family and medical leave insurance.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Kohl-Welles, Fairley, Franklin, Brown and Kline).

**Brief Summary of Engrossed Second Substitute Bill**

- Establishes the family and medical leave insurance program.
- Provides for payment of benefits of \$250 per week for up to five weeks to individuals on family and medical leave.
- Provides for assessment of premiums of 2 cents per hour worked per individual.

**Hearing Date:** 3/20/07

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

**Background:**

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

Federal Law: 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. 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.

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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.*

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.

State Law: The state Family Leave Law generally conforms to federal law and related regulations, with certain exceptions. Upon returning from leave, eligible employees are entitled to be returned 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. Employers must allow employees to continue their health coverage at their own expense during leave.

### **Summary of Bill:**

A new partial wage replacement program, the family and medical leave insurance program, is established. Beginning on October 1, 2009, benefits of \$250 per week for up to five weeks are paid to individuals who are unable to perform their regular or customary work because they are on family and medical leave. Premiums of 2 cents per hour worked per individual are assessed. Employers are required to deduct the full amount of the premiums from the individual's pay. The program is administered by the Department of Labor and Industries (Department).

Family and Medical Leave: "Family and medical leave" means leave for: (1) the birth or placement of a child; or (2) a family member's serious health condition. "Family member" means the individual's child, spouse or domestic partner, parent, or person involved in a legal relationship governed by domestic relations laws.

Eligibility: An individual is eligible to receive benefits if he or she has worked 680 hours in employment covered by unemployment compensation during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family and medical leave. An employer or a self-employed person not mandatorily covered may elect coverage.

Other Requirements: If leave is foreseeable, the individual is required to provide notice of leave in the same manner required under the state Family Leave Law.

Disqualification: An individual is disqualified from receiving benefits if the individual made false statements to obtain benefits or, with respect to leave for the employee's own serious health condition, if the condition resulted from perpetration of a gross misdemeanor or felony.

Other Leave and/or Compensation: An employer may require an individual who is receiving benefits to take the leave concurrently with leave under federal, state, or local law, with certain exceptions. An employer may not require an individual to exhaust paid leave or disability insurance before receiving benefits. An individual may elect when he or she uses paid leave. An individual may not increase the amount of leave to which the individual is entitled under the federal Family and Medical Leave Act and other laws by "tacking on" any leave to which the individual is entitled under the family and medical leave insurance program. An individual may not receive benefits while entitled to certain workers' compensation, unemployment compensation, crime victims' compensation, or disability insurance benefits.

Amount: Initially, the amount of the weekly benefit is \$250 for an individual who was regularly working 35 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an individual who was regularly working less than 35 hours per week, and for an individual who is on leave for fewer hours per week than he or she was regularly working. Each year thereafter, the amount of the weekly benefit is adjusted for inflation by the Department. The individual's weekly benefit may not exceed the individual's average weekly wage.

Duration: An individual is entitled to receive benefits for a maximum of five weeks in an application year. If spouses or people involved in a legal relationship governed by domestic relations laws are employed by the same employer, the employer may require that they not take leave concurrently for: (1) the birth or placement of a child; or (2) a parent's serious health condition.

Reinstatement: An individual is entitled to be restored to a position of employment in the same manner as an employee entitled to leave under the state Family Leave Law is restored to a position of employment. However, the individual must have worked for an employer with more than 25 employees for at least 12 months, and for at least 1,250 hours over the previous 12 months.

Premiums: Beginning on January 1, 2009, an employer is required to deduct premiums from pay. Initially, the premium is 2 cents per hour worked per individual. Every year thereafter, the amount of the premium is adjusted by the Department to ensure that it is at the lowest rate necessary to pay benefits and administrative costs, and maintain actuarial solvency of the program on a current basis.

Penalties: An individual who receives benefits erroneously or as a result of willful misrepresentation must repay the benefits and may be subject to penalties. An employer that fails to make reports or pay premiums required by the Department is subject to sanctions, including penalties, interest, and collection procedures.

Confidentiality: Information in an employee's record is not subject to public disclosure, but an employer may review the records of its employee in connection with a pending claim. Information that the Department obtains from employers' records for administration of the program is not subject to public disclosure.

Discrimination: An employer or other person may not discriminate against a person for filing a claim for benefits, communicating an intent to file a claim, or testifying or assisting in a proceeding related to a family and medical leave insurance.

Dedicated Account: A dedicated account is established. Premiums and penalties are paid into and benefits are paid out of the account.

Loan: If necessary, the director of the Department may, from time to time before July 1, 2009, lend funds from the Supplemental Pension Fund to the Family and Medical Leave Insurance Account. The loaned funds are for the purposes of administering the family and medical leave insurance program and paying family and medical leave insurance benefits. The loaned funds must be repaid, with interest, from the Family and Medical Leave Insurance Account to the Supplemental Pension Fund within two years of the loan. The authority to make a loan expires October 1, 2011.

**Reports:** Beginning on September 1, 2010, and annually thereafter, the Department must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

**Tax Credit:** A tax credit is allowed for businesses employing 50 or fewer persons who hire a replacement worker for an employee on leave. The credit is \$1200 for each replacement worker.

**Rules Authority:** The bill contains provisions requiring the exercise of rule-making powers by the Department of Labor and Industries. In adopting rules, the director of the Department 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 March 15, 2007.

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