

SENATE BILL REPORT

SB 5659

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 27, 2007
Ways & Means, March 5, 2007

Title: An act relating to family and medical leave insurance.

Brief Description: Establishing family and medical leave insurance.

Sponsors: Senators Keiser, Kohl-Welles, Fairley, Franklin, Brown and Kline.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/22/07, 2/27/07[DPS-WM, DNP].

Ways & Means: 3/05/07 [DP2S, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5659 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senators Clements, Ranking Minority Member, Hewitt and Holmquist.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5659 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Fairley, Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Honeyford, Parlette and Schoesler.

Staff: Paula Moore (786-7449)

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.

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. 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: The bill as referred to committee not considered.

Summary of Recommended Substitute as Heard in Committee (Labor, Commerce, Research & Development): A new partial wage replacement program, the family and medical leave insurance program, is established. Beginning on September 1, 2008, benefits of \$250 per week for up to five weeks are paid to individuals on family and medical leave. Premiums of two cents per hour worked per individual are assessed. Employers are required to pay the premiums, and are authorized to retain the premiums from earnings. The program is administered by the Department of Labor and Industries (L&I).

Family and Medical Leave: "Family and medical leave" means leave as defined and described in the state Family Leave Law for: (1) the birth or placement of a child; (2) a family member's serious health condition; or (3) the employee's serious health condition. "Family member" means the individual's child, spouse or domestic partner, or parent.

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 to his or her employer. If leave is to care for a family member with a serious health condition or because of the employee's serious health condition, the individual may be required by the L&I to support his or her claim with medical certification.

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 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.

Benefits: An individual is entitled to receive benefits for a maximum of five weeks in an application year. Initially, the amount of the weekly benefit is \$250 for an individual who was regularly working 40 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 40 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 L&I.

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 the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months.

Premiums: Beginning on January 1, 2008, an employer is required to pay premiums, and is authorized to retain premiums from earnings. Initially the premium is two cents per hour worked per individual. Every year thereafter, the amount of the premium is adjusted by L&I 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 L&I 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.

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.

Loan: If necessary, the director of L&I may loan funds from the supplemental pension fund to the family and medical leave insurance account. The loan funds must be repaid, with interest,

from the family and medical leave insurance account to the supplemental pension fund within one year of the loan.

Reports: Beginning on September 1, 2009, and annually thereafter, L&I must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): It is specified that benefits are payable to an individual only during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family and medical leave. It provides that an individual regularly working 35 hours (instead of 40 hours) or more per week may receive the maximum weekly benefit. It also specifies that the individual's weekly benefit may not exceed the individual's average weekly wage. It specifies that 5 weeks is the maximum number of weeks of leave to which spouses and domestic partners employed by the same employer are entitled if leave is taken for the birth or placement of a child or for a parent's serious health condition.

It clarifies that an individual intending to take family and medical leave must provide his or her employer with written notice in the same manner as an employee is required to give notice under the state Family Leave Law. It clarifies that an individual receiving benefits is entitled to be restored to a position from employment in the same manner as an employee entitled to leave under the state Family Leave Law, regardless of the number of employees employed by the employer. It permits an employer to deny restoration to key employees in the same circumstances and the same manner specified in the state Family Leave Law. It does not provide that leave for sickness or temporary disability because of pregnancy or childbirth for which the individual is receiving family and medical leave insurance benefits is in addition to leave under federal or state family and medical leave laws.

It clarifies that appropriations are required for administrative expenses, but not for benefit payments. The State Investment Board is directed to invest excess funds in the Family and Medical Leave Insurance Account in the same manner as it invests excess funds in industrial insurance accounts. It provides that the Family and Medical Leave Insurance Account must receive its proportionate share of interest earnings in the same manner as the Medical Aid Account. It clarifies that funds in the Supplemental Pension Fund may be loaned to the Family and Medical Leave Insurance Account.

It changes start-up dates. The premium collections begin January 1, 2009 (instead of 2008). The benefit payments begin July 1, 2009 (instead of September 1, 2008). The benefits are first adjusted on June 30, 2010 (instead of 2009). The reports are first due September 1, 2010 (instead of 2009).

EFFECT OF CHANGES MADE BY RECOMMENDED SECOND SUBSTITUTE AS PASSED COMMITTEE (Ways & Means): The deduction of premiums from wages is made mandatory. Loans from the Supplemental Pension Fund to the Family and Medical Leave Insurance Account must be made before July 1, 2009, and repaid within one year. The section expires October 1, 2010. If spouses/domestic partners are employed by the same employer, that employer may require that spouses/domestic partners not take leave concurrently. The "key employee" exception to the reinstatement provision is deleted.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Labor, Commerce, Research & Development):

PRO: Many patients are discharged from the hospital before they are ready and they need someone to be with them for awhile after they return home. Many relatives would like to assist but can't afford to leave their jobs to do so. This means that some people have to reside in a nursing home for a period of time which is far more expensive than providing family members with family leave insurance. Workers' productivity at work is low if they are worried about sick family members at home. Family leave insurance is economical and is the right thing to do. Workers will make errors at work or be less productive because they are distracted by a sick family member. Holding a position open for someone on family leave is much cheaper than hiring a new employee. These family leave insurance programs work and this bill is modeled after those in other states that have worked.

CON: Ninety-six percent of the small business representatives surveyed about this bill oppose it. Many small businesses actually pay for leave in different ways. Small businesses don't need the regimen provided by this bill; it is easier for them to handle this issue internally with their own employees in a way that works for everyone involved. Small retailers cannot carry someone for five weeks while they are on family leave. How will they stay afloat if they are paying someone overtime to fill a spot vacated by someone taking family leave? We don't think the two cents an hour premium is enough to fund this program. If it isn't enough, then employers will be expected to fill in the gaps. This approach adds a sixth layer of leave programs for workers in this state. Employers and employees need to come together and come up with a flexible approach to take time off to care for sick relatives.

Persons Testifying (Labor, Commerce, Research & Development): PRO: Senator Keiser, prime sponsor; Jerri Wood, Lance Armstrong Foundation; Sean O'Sullivan, Association of Western Pulp and Paper Workers; Sharon Ness, United Food and Commercial Workers Local 141; Dolores Guhndrone, Hallmark, Inc.; Marilyn Watkins, Economic Opportunity Institute.

CON: Kris Tefft, Association of Washington Business; Vicky Marin, Washington Retail Association; Carolyn Logue, National Federation of International Business.

Staff Summary of Public Testimony (Ways & Means): PRO: The fiscal impact to the General Fund is limited only to the state's cost as an employer. These are just initial costs. The bill uses L&I funding for its loan. The premiums will pay the costs of the benefits.

CON: We are concerned with the funding. There is not enough funding for this program in the long-term. Over time, it appears less money will come into this program and employers will be asked to fill the gap.

Persons Testifying (Ways & Means): PRO: Pam Crone, Washington State Labor Council, Northwest Women's Law Center.

CON: Vicki Marin, Washington Retail Association.