

HOUSE BILL REPORT

HB 1457

As Reported by House Committee On:
Labor & Workforce Development

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

Brief Description: Implementing family and medical leave insurance.

Sponsors: Representatives Green, Sawyer, Reykdal, Appleton, Sells, Ormsby, Bergquist, Jinkins, Pollet, Fey, Moeller, Kagi, Freeman and Hudgins.

Brief History:

Committee Activity:

Labor & Workforce Development: 2/5/13, 2/13/13 [DPS].

Brief Summary of Substitute Bill

- Provides benefits for individuals on leave for a family member's serious health condition or the individual's own serious health condition, in addition to leave for a child's birth or placement.
- Provides 12 weeks of leave for birth or placement of a child and for a family member's serious health condition, plus 12 weeks for an individual's own serious health condition, in an application year.
- Provides for benefits based on the individual's wages rather than a flat amount.
- Assesses a premium on employers of 0.2 percent of wages beginning on July 1, 2014, and then 0.4 percent of wages beginning on January 1, 2016, to finance benefits and administration, with subsequent annual adjustments. Allows employers to deduct one-half of premiums from employee pay.
- Provides for the Employment Security Department to administer most parts of the program.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

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 Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

Staff: Joan Elgee (786-7106).

Background:

In 2007 a framework for a family leave insurance program was enacted.

Beginning October 1, 2015, benefits of \$250 per week for up to five weeks are payable to individuals on leave for birth of a child or the placement of a child for adoption. "Child" means a biological child or an adopted child.

To receive benefits, an individual must have 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 leave (the "qualifying year"). An employer or a self-employed person not mandatorily covered may elect coverage.

An individual who has worked for at least 12 months for an employer with more than 25 employees and for at least 1,250 hours over the previous 12 months with the employer is entitled to be restored to a position with the employer.

Federal and state laws provide that certain employees are entitled to unpaid family and medical leave. The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of leave in a 12-month period for specified family and medical reasons, and provides for job protection for employees on leave. The state Family Leave Act (FLA) is similar to the FMLA. Paid family leave must be taken concurrently with leave under the FMLA or the FLA.

Summary of Substitute Bill:

Purposes of Leave.

Leave may be taken for a family member's serious health condition or the individuals' own serious health condition, in addition to birth or placement of a child.

The definition of child is modified to be the same as in the state Family Leave Act (FLA) and means a biological or adopted child, a foster child, a stepchild, a legal ward, or a child of a person standing in local parentis, who is: (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.

A "family member" is the individual's child, spouse, domestic partner, or parent, or a designated person. If an individual does not have a spouse or domestic partner, he or she

may designate one person for whom the individual will care if the designated person has a serious health condition. An employer may establish a designation process under which an individual may designate a person within 30 days of hire. The employer must permit a new or changed designation on an annual basis. If the employer does not have a process, the individual may designate the person when filing a claim.

"Serious health condition" has the same meaning as in the FLA, and means an illness, injury, impairment, or physical or mental condition that involves inpatient care at specified facilities, or continuing treatment by a health care provider. A number of types of incapacity qualify as "continuing treatment by a health care provider," including an incapacity lasting more than three consecutive days that involves treatment by a health care provider. Some conditions are specified not to be serious health conditions.

Amount of Benefit.

The benefit amount is changed to 5.2 percent of the individual's average quarterly wages in the two quarters of the individual's qualifying year in which the individual's wages were the highest, up to \$1,000 per week. The maximum amount is adjusted annually for inflation. The qualifying year is the last four calendar quarters only if the first four of the last five completed calendar quarters does not establish eligibility.

Duration.

The maximum duration of leave is 12 weeks for a child's birth or placement and for a family member's serious health condition. In addition, benefits are payable for 12 weeks for the individual's serious health condition. The number of weeks of leave apply to an application year.

Eligibility.

Employers include railroads. Individuals on leave for their serious health condition are disqualified from benefits for 52 weeks if the condition resulted from the individual's perpetration of a gross misdemeanor or felony.

Other Benefit Provisions.

A provision giving individuals the option to have federal income tax deducted from benefits and transferred to the federal taxing authority is eliminated. Individuals file claims for benefits as required by rule, rather than in each week of leave. With respect to serious health conditions, individuals must authorize the individual's or the family member's health care provider to certify a serious health condition.

Job Protection.

The job protection provision is modified to apply to employers with 25 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year within 75 miles of the employee's worksite, rather than employers with more than 25 employees. Employees entitled to job protection are those who were employed by that employer for at least six months (rather than 12 months) and for at least 650 hours (instead of 1,250 hours) during the previous six-month (rather than 12-month) period.

Other Leave and Benefits.

An employer may require an individual receiving benefits to take the leave concurrently with leave under other laws. An employer may not require an individual to exhaust paid leave or disability insurance before receiving benefits. No benefits are payable while an individual is entitled to benefits under crime victims' compensation, workers' compensation, unemployment compensation, or disability insurance laws.

An individual entitled to job protection under another law is entitled to the protections of the most favorable law.

The provisions do not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy that provides greater employment protection, leave from employment, or wage replacement benefits. An employer may enter a collective bargaining agreement or adopt a policy to coordinate existing benefits with leave and wage replacement benefits.

The employer may require that spouses or domestic partners not take leave concurrently for a parent's serious health condition, or for the birth or placement of a child.

Premiums.

Employers pay premiums at the rate of 0.2 percent of wages beginning July 1, 2014, and 0.4 percent of wages beginning January 1, 2016. The rate must be adjusted annually to ensure that it is the lowest rate necessary to pay benefits and administrative costs on a current basis and maintain actuarial solvency of the program. Employers may deduct one-half of premiums from employee pay. A temporary help company is considered the employer but the customer to whom the employees were provided is liable for premiums if the temporary help company fails to pay.

Premiums are deposited into the Family and Medical Leave Insurance Account. Employers that fail to pay premiums are subject to sanctions, including penalties, interest, and collection procedures.

Requirements relating to the assessment and collection of unemployment insurance premiums apply to family and medical leave insurance premiums. Employer record keeping requirements are established.

Tax Credit.

A business and occupation or public utility tax credit is available to businesses employing fewer than 50 persons at all worksites for the first 24 months after the employer hires its first employee. The credit is the amount of premium paid by the employer, less amounts deducted from employee pay, up to a maximum of \$1,000. Unused credit may be carried over into subsequent reporting periods. No application is required, but the employer must retain records. General tax administrative provisions apply.

Unemployment Compensation Charge Relief.

Employers may request relief of unemployment benefit charges that result from paying unemployment benefits to a temporary replacement employee who worked for the employer for 15 weeks or less and who was laid off due to the return of an employee who was receiving family and medical leave benefits.

Implementation and Administration.

Benefits for a family member's serious health condition are payable beginning October 1, 2015. Benefits for an individual's serious health condition are payable beginning October 1, 2016.

Premiums are due beginning July 1, 2014.

Elective coverage is available beginning January 1, 2015.

The Employment Security Department (ESD) pays benefits, collects premiums, and administers related provisions. The Department of Labor and Industries (L&I) enforces the job protection provision, and the Department of Revenue administers the tax credits.

The ESD must adopt government efficiencies to improve administration and reduce costs. These efficiencies include combined reporting and payment with a single return of unemployment contributions and family and medical leave premiums. The ESD must also adopt government efficiencies with respect to the elective coverage program.

Other.

The ESD's annual reporting requirements are expanded to include benefits paid, information on program participants, and the costs of providing benefits. The first report is due in December rather than September of 2016. Outreach information must include information about medical leave and the relationship between employment protection, leave from employment, and wage replacement benefits. The ESD must prepare the outreach information with technical assistance from the L&I.

Elective coverage is modified to allow the ESD to cancel coverage if required payments and reports are not made. The ESD may collect due and unpaid premiums, and also levy additional premiums for the remainder of coverage periods. Time frames are set forth for the ESD to give notice of coverage and for the employer to notify employees.

The appeal provisions are modified. An administrative law judge's proposed decision and order is subject to judicial review, instead of the Director of the ESD's review. Provisions are made for redeterminations and appeals. Determinations of allowances or denials of benefits and redeterminations of benefit amounts are subject to appeal. Determinations of the amount of benefits are not subject to appeal. An award of attorneys' fees and costs is available only on judicial review and may not be awarded to the ESD.

The ESD must issue overpayment assessments and may file warrants to recover overpayments.

Specific provisions regarding retaliation complaints are added.

The ESD may require applicants for benefits to attest that requirements for benefits have been met.

Annual adjustments to benefits amounts and premium rates are exempt from the Administrative Procedure Act requirements for significant legislative rules.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the business and occupation (B&O) tax credit provision to: eliminate the requirement that the 50 or fewer employees be within a 75-mile radius of an employee's worksite; provide that the 50 or fewer employees is determined by considering all worksites; allow credits to be carried over into a subsequent tax reporting period; and add administrative provisions. In addition, the substitute bill allows the same credit provided for B&O taxpayers for taxpayers who pay the public utility tax in lieu of the B&O tax. Housekeeping changes are made, including clarifying that the premium is paid to the Employment Security Department.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill will promote strong families and a healthy middle class. With healthier families, fewer people will need public assistance and there will be cost savings to the state. Paid leave is an investment in workers and families and shows respect to workers. Many other countries place a higher importance on child bonding. This bill is a step in the right direction of creating a family-friendly nation. Most workers only get a few days or weeks of paid leave and over half of lower wage workers do not get any leave.

When families have a health crisis, they need time to recover and the support of their families. Often people in the hospital are alone because family members have to go back to work. It is very stressful when you have to take unpaid time off when a parent or child is ill. There is a crisis looming in elder care. This bill will give elders a higher quality of life and provide financial stability for the family. Many people have children under age 18 and elderly parents. New parents should be able to take time off without worrying about bills. Babies may end up in the Neonatal Intensive Care Unit. People may lose their homes if they do not have paid leave when children are ill. Children that do not get enough attention screw up. It should not be a matter of luck whether a parent can bond with a child, take care of an elderly parent, or fully recover from surgery.

The bill will only cost one employer about \$20 per month. The costs are negated by the benefits, and businesses can write off the costs. The states that have paid leave represent 20 percent of the United States' workforce. Premiums in these states have been stable for a long time. Babies and mothers in these states are healthier. The costs, premiums, and take-up rates for Washington are known.

Employers will not change without a change in the law. This is a practical no-brainer bill that solves a problem that the Legislature can solve.

(Opposed) The federal Family and Medical Leave Act was a compromise. It applies only to larger employers and is unpaid. Paid family leave has not caught on. New Jersey and California had pre-existing disability programs.

Do not send a message to job creators that Washington wants to expand costs. Jobs are not being created now and the bill jeopardizes the ability of small businesses, who cannot afford the bill, to create jobs. Repeal of the existing law is supported. The law has been delayed twice and this bill expands it.

The tax created by this bill will have to go up when people start taking leave. The current program was going to cost \$50 to \$60 million per year to administer.

Employers can provide the benefit without the law. Employers and employees already work together on benefits, but this bill takes away choice and flexibility for employees and gives fewer options for designing benefits. When all businesses are required to do the same thing, opportunity is taken away.

Persons Testifying: (In support) Representative Green, prime sponsor; Mark Barfield; Frank Irigon, Puget Sound Advocates for Retirement Action; Don Orange, Hoesly ECO Automotive; Sarah Francis, Moms Rising; Mike Elliott, United Transportation Union and Brotherhood of Locomotive Engineers and Trainmen; Sean O'Sullivan, Association of Western Pulp and Paper Workers Union; Marilyn Watkins, Economic Opportunity Institute; and Ron Schnell, United Food and Commercial Workers Local 367.

(Opposed) Kris Tefft, Association of Washington Business; Steve Neighbors, TERRA Staffing Group; Gary Smith, Independent Business Association; and Erin Shannon, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: None.