

SHB 1116 - H AMD 405

By Representative Appleton

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 49.78.010 and 2006 c 59 s 1 are each amended to
4 read as follows:

5 The legislature finds that the demands of the workplace and of
6 families need to be balanced to promote family stability and economic
7 security. Workplace leave policies are desirable to accommodate
8 changes in the workforce such as rising numbers of dual-career
9 couples, working single parents, and an aging population. In
10 addition, given the mobility of American society, many people no
11 longer have available community or family support networks and
12 therefore need additional flexibility in the workplace. The
13 legislature declares it to be in the public interest to provide
14 reasonable family leave and paid family leave for medical reasons,
15 for the birth or placement of a child for adoption or foster care
16 with the employee, ((and)) for the care of a family member who has a
17 serious health condition, and for a qualifying exigency under the
18 federal family and medical leave act.

19 **Sec. 2.** RCW 49.78.020 and 2009 c 521 s 135 are each amended to
20 read as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

23 (1) "A day of family leave" means any day which the employee uses
24 for family leave and for which the employee has not received his or
25 her regular remuneration.

26 (2) "Child" means a biological, adopted, or foster child, a
27 stepchild, a legal ward, a child of either partner in a state
28 registered domestic partnership, or a child of a person standing in
29 loco parentis(~~(, who is: (a) Under eighteen years of age; or (b)~~
30 ~~eighteen years of age or older and incapable of self-care because of~~
31 ~~a mental or physical disability)).~~

1 ~~((2))~~ (3) "Commissioner" means the commissioner of the
2 department or the commissioner's designee.

3 (4) "Department" means the employment security department (~~of~~
4 ~~labor and industries~~)).

5 ~~((3) "Director" means the director of the department.~~

6 ~~(4)(a))~~ (5)(a) "Employee" means ((a person who has been
7 employed: (i) For at least twelve months by the employer with respect
8 to whom leave is requested under RCW 49.78.220; and (ii) for at least
9 one thousand two hundred fifty hours of service with the employer
10 during the previous twelve-month period.

11 ~~(b) "Employee" does not mean a person who is employed at a~~
12 ~~worksite at which the employer as defined in (a) of this subsection~~
13 ~~employs less than fifty employees if the total number of employees~~
14 ~~employed by that employer within seventy five miles of that worksite~~
15 ~~is less than fifty)) an individual, working in the state, who is in~~
16 ~~the employment of: (i) A covered employer for twenty-six or more~~
17 ~~consecutive weeks, working a schedule that is usual for the trade or~~
18 ~~employer; or (ii) a covered employer for one hundred seventy-five~~
19 ~~days or more in the previous twelve-month period, working a schedule~~
20 ~~that is less than the trade's or employer's usual workweek.~~

21 (b) Where the context so dictates, the term "employee" may also
22 include an employer for those employers who are eligible for the
23 family leave benefits specified in this chapter.

24 (c) "Employee" does not include employees of the United States of
25 America.

26 (6) "Employee's average weekly wage" means one-thirteenth of the
27 total wages paid to an individual in the high quarter. For purposes
28 of this computation, the high quarter is that quarter in which the
29 individual's total wages were highest among the first four of the
30 last five completed calendar quarters immediately before the quarter
31 in which occurs the week with respect to which the computation is
32 made.

33 ~~((5))~~ (7)(a) "Employer" means: ~~((a) Any person, firm,~~
34 ~~corporation, partnership, business trust, legal representative, or~~
35 ~~other business entity which engages in any business, industry,~~
36 ~~profession, or activity in this state and includes any unit of local~~
37 ~~government including, but not limited to, a county, city, town,~~
38 ~~municipal corporation, quasi-municipal corporation, or political~~
39 ~~subdivision, which employs fifty or more employees for each working~~
40 ~~day during each of twenty or more calendar workweeks in the current~~

1 ~~or preceding calendar year))~~ (i) Any individual or type of
2 organization, including any partnership, association, trust, estate,
3 joint stock company, insurance company, limited liability company, or
4 corporation, whether domestic or foreign, or the receiver, trustee in
5 bankruptcy, trustee, or the legal representative of a deceased
6 person, having any person in employment or, having become an
7 employer, has not ceased to be an employer as provided in this title;
8 ~~((b))~~ (ii) the state, state institutions, and state agencies; and
9 ~~((e))~~ (iii) any unit of local government including, but not limited
10 to, a county, city, town, municipal corporation, quasi-municipal
11 corporation, or political subdivision.

12 ~~((6))~~ (b) "Employer" does not include the United States of
13 America.

14 (8) "Employment" means personal service, of whatever nature,
15 unlimited by the relationship of master and servant as known to the
16 common law or any other legal relationship, including service in
17 interstate commerce, performed for wages or under any contract
18 calling for the performance of personal services, written or oral,
19 express or implied. "Employment" does not include self-employed
20 individuals.

21 (9) "Employment benefits" means all benefits provided or made
22 available to employees by an employer, including group life
23 insurance, health insurance, disability insurance, sick leave, annual
24 leave, educational benefits, and pensions except benefits that are
25 provided by a practice or written policy of an employer or through an
26 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

27 ~~((7))~~ (10) "Family leave" means any leave taken by an employee
28 from work:

29 (a) Made necessary by the employee's own serious health
30 condition;

31 (b) To participate in providing care, including physical or
32 psychological care, for a family member of the employee made
33 necessary by a serious health condition of the family member;

34 (c) To bond with the employee's child during the first twelve
35 months after the child's birth, or the first twelve months after the
36 placement of the child for adoption or foster care with the employee;
37 or

38 (d) Because of any qualifying exigency as permitted under the
39 family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e) and 29

1 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on the
2 effective date of this section.

3 (11) "Family member" means a child, parent, grandparent,
4 grandchild, spouse, or state registered domestic partner of an
5 employee.

6 ~~((+8))~~ (12) "Grandchild" means a child of the employee's child.

7 (13) "Grandparent" means a parent of the employee's parent.

8 (14) "Health care provider" means: (a) A person licensed as a
9 physician under chapter 18.71 RCW or an osteopathic physician and
10 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
11 registered nurse practitioner under chapter 18.79 RCW; or (c) any
12 other person determined by the ~~(director)~~ commissioner to be
13 capable of providing health care services.

14 ~~((+9))~~ (15) "Intermittent leave" is leave taken in separate
15 blocks of time due to a single qualifying reason.

16 ~~((+10) "Leave for a family member's serious health condition"~~
17 ~~means leave as described in RCW 49.78.220(1)(c).~~

18 ~~(11) "Leave for the birth or placement of a child" means leave as~~
19 ~~described in RCW 49.78.220(1) (a) or (b).~~

20 ~~(12) "Leave for the employee's serious health condition" means~~
21 ~~leave as described in RCW 49.78.220(1)(d).~~

22 ~~(+13))~~ (16) "Parent" means the biological, foster, or adoptive
23 parent ~~(of an employee)), a parent-in-law, a step parent, a legal~~
24 guardian, or an individual who stood in loco parentis to an employee
25 when the employee was a child.

26 ~~((+14))~~ (17) "Period of incapacity" means an inability to work,
27 attend school, or perform other regular daily activities because of
28 ~~(the))~~ a serious health condition, treatment of that condition or
29 recovery from it, or subsequent treatment in connection with such
30 inpatient care.

31 ~~((+15))~~ (18) "Premium" or "premiums" means the payments required
32 by section 8 of this act and paid to the department for deposit in
33 the family leave insurance account under section 37 of this act.

34 (19) "Reduced leave schedule" means a leave schedule that reduces
35 the usual number of ~~(hours)~~ days per workweek ~~(, or hours per~~
36 workday,)) of an employee.

37 ~~((+16))~~ (20)(a) "Serious health condition" means an illness,
38 injury, impairment, or physical or mental condition that involves:

39 (i) Inpatient care in a hospital, hospice, or residential medical
40 care facility, including any period of incapacity; or

1 (ii) Continuing treatment by a health care provider. A serious
2 health condition involving continuing treatment by a health care
3 provider includes any one or more of the following:

4 (A) A period of incapacity of more than three consecutive
5 calendar days, and any subsequent treatment or period of incapacity
6 relating to the same condition, that also involves:

7 (I) Treatment two or more times by a health care provider, by a
8 nurse or physician's assistant under direct supervision of a health
9 care provider, or by a provider of health care services under orders
10 of, or on referral by, a health care provider; or

11 (II) Treatment by a health care provider on at least one occasion
12 which results in a regimen of continuing treatment under the
13 supervision of the health care provider;

14 (B) Any period of incapacity due to pregnancy, or for prenatal
15 care;

16 (C) Any period of incapacity or treatment for such incapacity due
17 to a chronic serious health condition. A chronic serious health
18 condition is one which:

19 (I) Requires periodic visits for treatment by a health care
20 provider, or by a nurse or physician's assistant under direct
21 supervision of a health care provider;

22 (II) Continues over an extended period of time, including
23 recurring episodes of a single underlying condition; and

24 (III) May cause episodic rather than a continuing period of
25 incapacity;

26 (D) A period of incapacity which is permanent or long-term due to
27 a condition for which treatment may not be effective. The employee or
28 family member must be under the continuing supervision of, but need
29 not be receiving active treatment by, a health care provider; or

30 (E) Any period of absence to receive multiple treatments,
31 including any period of recovery from the treatments, by a health
32 care provider or by a provider of health care services under orders
33 of, or on referral by, a health care provider, either for restorative
34 surgery after an accident or other injury, or for a condition that
35 would likely result in a period of incapacity of more than three
36 consecutive calendar days in the absence of medical intervention or
37 treatment, such as cancer, severe arthritis, or kidney disease.

38 (b) Treatment for purposes of (a) of this subsection includes,
39 but is not limited to, examinations to determine if a serious health
40 condition exists and evaluations of the condition. Treatment does not

1 include routine physical examinations, eye examinations, or dental
2 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
3 continuing treatment includes, but is not limited to, a course of
4 prescription medication or therapy requiring special equipment to
5 resolve or alleviate the health condition. A regimen of continuing
6 treatment that includes taking over-the-counter medications, such as
7 aspirin, antihistamines, or salves, or bed-rest, drinking fluids,
8 exercise, and other similar activities that can be initiated without
9 a visit to a health care provider, is not, by itself, sufficient to
10 constitute a regimen of continuing treatment for purposes of this
11 chapter.

12 (c) Conditions for which cosmetic treatments are administered are
13 not "serious health conditions" unless inpatient hospital care is
14 required or unless complications develop. Unless complications arise,
15 the common cold, the flu, ear aches, upset stomach, minor ulcers,
16 headaches other than migraine, routine dental or orthodontia
17 problems, and periodontal disease are examples of conditions that do
18 not meet the definition of a "serious health condition" and do not
19 qualify for leave under this chapter. Restorative dental or plastic
20 surgery after an injury or removal of cancerous growths are serious
21 health conditions provided all the other conditions of this section
22 are met. Mental illness resulting from stress or allergies may be
23 serious health conditions provided all the other conditions of this
24 section are met.

25 (d) Substance abuse may be a serious health condition if the
26 conditions of this section are met. However, leave may only be taken
27 for treatment for substance abuse by a health care provider or by a
28 provider of health care services upon referral by a health care
29 provider. Absence from work because of the employee's use of the
30 substance, rather than for treatment, does not qualify for leave
31 under this chapter.

32 (e) Absences attributable to incapacity under (a)(ii)(B) or (C)
33 of this subsection qualify for leave under this chapter even though
34 the employee or the immediate family member does not receive
35 treatment from a health care provider during the absence, and even if
36 the absence does not last more than three days.

37 ((+17)) (21) "Spouse" means a husband or wife, as the case may
38 be, or state registered domestic partner.

1 (22) "State average weekly wage" means the most recent average
2 weekly wage calculated under RCW 50.04.355 and available on January
3 1st of each year.

4 NEW SECTION. **Sec. 3.** (1) Employees are eligible for family
5 leave benefits as provided in this chapter.

6 (2) An employee who has qualified for benefits under this chapter
7 continues to be qualified to begin using the family leave benefits
8 for an additional period of ninety days after their employment with a
9 covered employer ends.

10 (3) An employee's hours worked towards the qualification of
11 benefits and the employee's rights to receive family leave benefits
12 are portable between employers for a period of ninety days.

13 (4) In addition, every such employee who has previously completed
14 twenty-six or more consecutive weeks in employment with the covered
15 employer for purposes of paid family leave, and returns to work with
16 the same employer after an agreed and specified period of leave of
17 absence or vacation without pay becomes qualified for benefits
18 immediately with respect to such employment.

19 **Sec. 4.** RCW 49.78.220 and 2006 c 59 s 3 are each amended to read
20 as follows:

21 (1) Subject to RCW 49.78.260 (as recodified by this act), an
22 employee is entitled to a total of twelve workweeks of family leave
23 as defined in RCW 49.78.020 (as recodified by this act), or the
24 maximum duration of paid family leave benefits as set forth in
25 section 6 of this act, during any twelve-month period (~~for one or~~
26 ~~more of the following:~~

27 ~~(a) Because of the birth of a child of the employee and in order~~
28 ~~to care for the child;~~

29 ~~(b) Because of the placement of a child with the employee for~~
30 ~~adoption or foster care;~~

31 ~~(c) In order to care for a family member of the employee, if the~~
32 ~~family member has a serious health condition; or~~

33 ~~(d) Because of a serious health condition that makes the employee~~
34 ~~unable to perform the functions of the position of the employee)).~~

35 (2)(a) The entitlement to leave and family leave benefits for the
36 birth or placement of a child expires at the end of the twelve-month
37 period beginning on the date of such birth or placement.

1 (b) The entitlement to leave and family leave benefits for a
2 family member's or the individual's serious health condition, or
3 leave for qualifying exigency, expires at the end of the twelve-month
4 period beginning on the date of which the individual filed an
5 application for family leave benefits.

6 NEW SECTION. Sec. 5. (1) An employee is not entitled to family
7 leave benefits under this chapter:

8 (a) For more than twelve weeks during a period of fifty-two
9 consecutive calendar weeks;

10 (b) For any period during which a family leave care recipient
11 fails to submit to a physical examination as may be required under
12 RCW 49.78.270(8) (as recodified by this act);

13 (c) For any absence occasioned by the willful intention of the
14 employee to bring about injury to or the sickness of himself or
15 another, or resulting from any injury or sickness sustained in the
16 perpetration by the employee of an illegal act;

17 (d) For any day of family leave during which the employee
18 performed work for remuneration or profit;

19 (e) For any day of family leave for which the employee is
20 entitled to receive from his or her employer, or from a fund to which
21 the employer has contributed, remuneration in an amount equal to or
22 greater than that to which he or she would be entitled under this
23 chapter; but any voluntary contribution or aid which an employer may
24 make to an employee or any supplementary benefit paid to an employee
25 pursuant to the provisions of a collective bargaining agreement or
26 from a trust fund to which contributions are made pursuant to the
27 provisions of a collective bargaining agreement is not considered as
28 continued remuneration or maintenance for this purpose;

29 (f) For any period in respect to which such employee is subject
30 to suspension or disqualification of the accumulation of unemployment
31 insurance benefit rights, or would be subject if he or she were
32 eligible for such benefit rights, except for ineligibility resulting
33 from the employee's own serious medical condition;

34 (g) For any family leave commencing before the employee becomes
35 qualified for benefits under this chapter;

36 (h) For an employee who is not employed or is on administrative
37 leave from his or her employment;

38 (i) For an employee during periods where the employee is
39 collecting sick pay or paid time off from the employer; or

1 (j) For any day in which family leave care recipient works at
2 least part of that day for remuneration or profit for the covered
3 employer or for any other employer while working for remuneration or
4 profit, for him or herself, or another person or entity, during the
5 same or substantially similar working hours as those of the covered
6 employer from which family leave benefits are claimed, except that
7 occasional scheduling adjustments with respect to secondary
8 employments shall not prevent receipt of family leave benefits.

9 (2) An employer may allow an employee who has accrued vacation,
10 sick, or other paid time off to choose whether: (a) To take such
11 leave and receive full salary; or (b) not to take such leave and
12 receive paid family leave benefits, as provided in section 6 of this
13 act.

14 (3) During periods when the employee is receiving total
15 disability payments pursuant to a claim for workers' compensation
16 benefits, except that when the employee is receiving payments for
17 partial disability or reduced earnings under such laws, the family
18 leave benefit, when combined with the benefits under such laws shall
19 not exceed the average weekly wage in the employment for which family
20 leave benefits are sought.

21 NEW SECTION. **Sec. 6.** (1) Family leave benefits are payable to a
22 qualified employee for the first full day when family leave is
23 required and thereafter during the continuance of the need for family
24 leave, subject to the limitations as to maximum and minimum amounts
25 and duration and other conditions and limitations established in this
26 chapter. Successive periods of family leave caused by the same or
27 related injury or sickness are deemed a single period of family leave
28 only if separated by less than three months.

29 (2) The weekly benefit for family leave that occurs:

30 (a) On or after January 1, 2020, shall not exceed eight weeks
31 during any fifty-two week calendar period and shall be fifty percent
32 of the employee's average weekly wage but shall not exceed fifty
33 percent of the state average weekly wage;

34 (b) On or after January 1, 2021, shall not exceed ten weeks
35 during any fifty-two week calendar period and shall be fifty-five
36 percent of the employee's average weekly wage but shall not exceed
37 fifty-five percent of the state average weekly wage;

38 (c) On or after January 1, 2022, shall not exceed ten weeks
39 during any fifty-two week calendar period and shall be sixty percent

1 of the employee's average weekly wage but shall not exceed sixty
2 percent of the state average weekly wage; and

3 (d) On or after January 1st of each succeeding year, shall not
4 exceed twelve weeks during any fifty-two week calendar period and
5 shall be sixty-seven percent of the employee's average weekly wage
6 but shall not exceed sixty-seven percent of the Washington state
7 average weekly wage in effect.

8 (3)(a) The commissioner has the discretion to delay the increases
9 in the family leave benefits provided in subsection (2)(b), (c), and
10 (d) of this section by one or more calendar years. In determining
11 whether to delay the increase in the family leave benefit for any
12 year, the commissioner shall consider:

13 (i) The current cost to employees of the family leave benefit and
14 any expected change in the cost after the benefit increase;

15 (ii) The impact of the benefit increase on employers' business
16 and the overall stability of the program to the extent that
17 information is readily available;

18 (iii) The impact of the benefit increase on the financial
19 stability of the program; and

20 (iv) Any additional factors that the commissioner deems relevant.

21 (b) If the commissioner delays the increase in the family leave
22 benefit level for one or more calendar years, the family leave
23 benefit level that takes effect immediately following the delay is
24 the same benefit level that would have taken effect but for the
25 delay.

26 (4) The weekly benefit for family leave that occurs on or after
27 January 1, 2020, shall not be less than one hundred dollars per week
28 except that if the employee's wages at the time of family leave are
29 less than one hundred dollars per week, the employee shall receive
30 his or her full wages.

31 (5) Subject to RCW 49.78.230(3) (as recodified by this act),
32 benefits may be payable to employees for paid family leave taken
33 intermittently or for less than a full workweek.

34 NEW SECTION. **Sec. 7.** (1) Benefits provided under this chapter
35 shall be paid periodically and promptly, except when an employer
36 contests a period of family leave. The department must send the first
37 benefit payment to the employee within fourteen calendar days after
38 the first properly completed weekly application is received by the
39 department. Subsequent payments must be sent at least biweekly

1 thereafter. If the employer contests an initial application for
2 family leave benefits, the employer must notify the employee and the
3 department in a manner prescribed by the commissioner within eighteen
4 days of filing of the employee's proof of application, as provided
5 under RCW 49.78.270. Failure to timely contest an initial application
6 shall constitute a waiver of objection to the family leave
7 application. Any inquiry which requires the employee's response in
8 order to continue benefits uninterrupted or unmodified shall provide
9 a reasonable time period in which to respond and include a clear and
10 prominent statement of the deadline for responding and consequences
11 of failing to respond.

12 (2) The department must develop, in rule, a process by which an
13 employer may contest an initial application for family leave
14 benefits.

15 NEW SECTION. **Sec. 8.** (1) Beginning January 1, 2019, and each
16 year thereafter, every person in the employment of a covered employer
17 and every person electing coverage under section 9 of this act must
18 contribute to the cost of providing family leave benefits under this
19 chapter, by paying a premium calculated by multiplying the premium
20 rate as set in this section by the amount of the employee's average
21 weekly wages.

22 (2)(a) On September 1, 2018, and annually thereafter, the
23 commissioner shall set the premium rate for employee contributions
24 beginning the following January 1st, using sound actuarial
25 principles.

26 (b) The commissioner must set a maximum on the amount of wages
27 that are subject to a premium assessment under this section that is
28 equal to two times the state's average weekly wage.

29 (3)(a) For calendar year 2020 and thereafter, the commissioner
30 must calculate the family leave insurance account balance ratio as of
31 September 30th of the previous year. The commissioner shall calculate
32 the account balance ratio by dividing the balance of the family leave
33 insurance account by total annual wages paid to employees and those
34 electing coverage pursuant to section 9 of this act. The division
35 shall be carried to the fourth decimal place with the remaining
36 fraction disregarded, unless it amounts to five thousandths or more,
37 in which case the fourth decimal place shall be rounded to the next
38 higher digit.

1 (b) Beginning January 1, 2020, if the account balance ratio
2 calculated in (a) of this subsection is below one-half percent, each
3 employee and those electing coverage pursuant to section 9 of this
4 act must also be charged a solvency surcharge at the lowest rate
5 necessary to provide revenue to pay for the administrative and
6 benefit costs for the calendar year, as determined by the
7 commissioner. The solvency surcharge shall be at least one-tenth
8 percent and no more than six-tenths percent of the employee's average
9 weekly wage.

10 (4) An employer is not required to fund any portion of the family
11 leave benefits.

12 (5)(a) The employer must collect from his or her employees the
13 premiums provided under this section, through payroll deductions and
14 remit the amounts collected to the department.

15 (b) In collecting employee premiums through payroll deductions,
16 the employer shall act as the agent of his or her employees and shall
17 remit the amounts to the department as required by this chapter.

18 (c) Premiums shall be collected in the manner and at such
19 intervals as provided in this chapter and directed by the department.

20 NEW SECTION. **Sec. 9.** (1) Any entity with employees not covered
21 by this chapter or a self-employed person, including a sole
22 proprietor, partner, or joint venturer, may elect coverage under this
23 chapter for all its employees for an initial period of not less than
24 three years and subsequent periods of not less than one year
25 immediately following a period of coverage. The employer or self-
26 employed person must file a notice of election in writing with the
27 department, in a manner as required by the department in rule. The
28 election becomes effective on the date of filing the notice with the
29 department.

30 (2) An employer or self-employed person who has elected coverage
31 may withdraw from coverage within thirty days after the end of each
32 period of coverage, or at such other times as the commissioner may
33 adopt by rule, by filing a notice of withdrawal in writing with the
34 commissioner, such withdrawal to take effect not sooner than thirty
35 days after filing the notice with the commissioner. Within five days
36 of filing written notice of the withdrawal with the commissioner, an
37 employer must provide written notice of the withdrawal to all its
38 employees.

1 (3) The department may cancel elective coverage if the employer
2 or self-employed person fails to make required payments or file
3 reports. The department may collect due and unpaid premiums and may
4 levy an additional premium for the remainder of the period of
5 coverage. The cancellation shall be effective no later than thirty
6 days from the date of the notice in writing advising the employer or
7 self-employed person of the cancellation. Within five days of
8 receiving written notice of the cancellation from the commissioner,
9 an employer must provide written notice of the cancellation to all
10 its employees.

11 (4) The department shall adopt rules for determining the wages of
12 individuals who may elect coverage under this section.

13 NEW SECTION. **Sec. 10.** (1) For purposes of this section, "public
14 employee" means any employee of the state, any political subdivision
15 of the state, a public authority or any other governmental agency or
16 instrumentality. "Public employer" means the state, any political
17 subdivision of the state, a public authority or any other
18 governmental agency or instrumentality thereof. "Employee
19 organization" means any lawful association, labor organization,
20 union, federation, council, or brotherhood, having as its primary
21 purpose the representation of employees on matters of employment
22 relations.

23 (2) Public employers shall collect premiums for family leave
24 benefits to public employees in accordance with the procedures and
25 terms set forth in subsection (3) of this section.

26 (3)(a) An employee organization may, pursuant to collective
27 bargaining, elect to participate in the family leave benefit
28 provisions in this chapter on behalf of those public employees it is
29 either certified or recognized to represent. This section does not
30 prohibit an agreement to elect to participate in family leave
31 benefits between the employee organization and any public employer.
32 An employee organization that has elected to participate in the
33 family leave benefit provisions in this chapter may, pursuant to
34 collective bargaining, terminate the election of it as is mutually
35 agreed upon between the employee organization and any public
36 employer.

37 (b) For public employees who are not represented by an employee
38 organization, the public employer may elect to participate in the
39 family leave benefit provisions in this chapter within ninety days'

1 notice to such public employees. All premiums for the benefits must
2 be paid by the employees. Following the election by a public employer
3 for public employees not represented by an employee organization, the
4 public employer may terminate the election of family leave benefits
5 with twelve months' notice to those public employees.

6 **Sec. 11.** RCW 49.78.230 and 2006 c 59 s 4 are each amended to
7 read as follows:

8 (1)(a) When leave is taken after the birth or placement of a
9 child for adoption or foster care, an employee may take leave
10 intermittently or on a reduced leave schedule with the employer's
11 agreement. The employer's agreement is not required, however, for
12 leave during which the employee has a serious health condition in
13 connection with the birth of a child or if the newborn child has a
14 serious health condition.

15 (b) Leave may be taken intermittently or on a reduced leave
16 schedule when medically necessary for medical treatment of a serious
17 health condition by or under the supervision of a health care
18 provider, or for recovery from treatment or recovery from a serious
19 health condition. It may also be taken to provide care or
20 psychological comfort to ~~((an immediate))~~ a family member with a
21 serious health condition.

22 (i) Intermittent leave may be taken for a serious health
23 condition that requires treatment by a health care provider
24 periodically, rather than for one continuous period of time, and may
25 include leave of periods from ~~((an hour or more))~~ one day to several
26 weeks.

27 (ii) Intermittent or reduced schedule leave may be taken for
28 absences where the employee or family member is incapacitated or
29 unable to perform the essential functions of the position because of
30 a chronic serious health condition even if he or she does not receive
31 treatment by a health care provider.

32 ~~((There is no limit on the size of an increment of leave))~~
33 When an employee takes intermittent leave or leave on a reduced leave
34 schedule~~((. However, an employer may limit leave increments to the~~
35 ~~shortest period of time that the employer's payroll system uses to~~
36 ~~account for absences or use of leave, provided it is one hour or~~
37 ~~less))~~ , the leave must be in an increment of one day of the
38 employee's regularly scheduled employment.

1 (d) The taking of leave intermittently or on a reduced leave
2 schedule under this section may not result in a reduction in the
3 total amount of leave to which the employee is entitled under RCW
4 49.78.220 (as recodified by this act) beyond the amount of leave
5 actually taken.

6 (2) If an employee requests intermittent leave, or leave on a
7 reduced leave schedule, for a family member's serious health
8 condition or the employee's serious health condition when the
9 condition is foreseeable based on planned medical treatment, the
10 employer may require such employee to transfer temporarily to an
11 available alternative position offered by the employer for which the
12 employee is qualified and that:

13 (a) Has equivalent pay and benefits; and

14 (b) Better accommodates recurring periods of leave than the
15 regular employment position of the employee.

16 (3) An employee who uses intermittent leave or leave on a reduced
17 leave schedule as provided in this section may be eligible to use the
18 sick leave or other paid time off as provided in RCW 49.12.270. An
19 employee electing to use the benefits that may be available under RCW
20 49.12.270 may not collect benefits payable under this chapter for the
21 same period of time.

22 **Sec. 12.** RCW 49.78.250 and 2006 c 59 s 6 are each amended to
23 read as follows:

24 (1) If the necessity for leave for the birth or placement of a
25 child for adoption or foster care with the employee is foreseeable
26 based on an expected birth or placement, the employee shall provide
27 the employer with not less than thirty days' notice, before the date
28 the leave is to begin, of the employee's intention to take leave for
29 the birth or placement of a child, except that if the date of the
30 birth or placement requires leave to begin in less than thirty days,
31 the employee shall provide such notice as is practicable.

32 (2) If the necessity for leave for a family member's serious
33 health condition or the employee's serious health condition is
34 foreseeable based on planned medical treatment, the employee:

35 (a) Must make a reasonable effort to schedule the treatment so as
36 not to disrupt unduly the operations of the employer, subject to the
37 approval of the health care provider of the employee or the health
38 care provider of the family member, as appropriate; and

1 (b) Must provide the employer with not less than thirty days'
2 notice, before the date the leave is to begin, of the employee's
3 intention to take leave for a family member's serious health
4 condition or the employee's serious health condition, except that if
5 the date of the treatment requires leave to begin in less than thirty
6 days, the employee must provide such notice as is practicable.

7 **Sec. 13.** RCW 49.78.260 and 2006 c 59 s 7 are each amended to
8 read as follows:

9 ~~((If spouses entitled to leave under this chapter are employed by
10 the same employer, the aggregate number of workweeks of leave to
11 which both may be entitled may be limited to twelve workweeks during
12 any twelve month period, if such leave is taken: (1) For the birth or
13 placement of a child; or (2) for a parent's serious health
14 condition.))~~ A covered employer is not required to permit more than
15 one employee to use the same period of family leave to care for the
16 same family member.

17 **Sec. 14.** RCW 49.78.270 and 2006 c 59 s 8 are each amended to
18 read as follows:

19 (1) ~~((An employer may require that a request for leave for a
20 family member's serious health condition or the employee's serious
21 health condition be supported))~~ Written notice and proof of need for
22 family leave shall be furnished to the employer, by or on behalf of
23 the employee claiming the serious health condition, by a
24 certification issued by the health care provider of the employee or
25 of the family member, as appropriate. The employee must provide(~~(, in~~
26 ~~a timely manner,~~)) a copy of the certification to the employer within
27 thirty days after commencement of the period of leave. The employer
28 must transmit the certification to the department.

29 (2) Certification provided under subsection (1) of this section
30 is sufficient if it states:

31 (a) The date on which the serious health condition commenced;

32 (b) The probable duration of the condition;

33 (c) The appropriate medical facts within the knowledge of the
34 health care provider regarding the condition;

35 (d)(i) For purposes of leave for a family member's serious health
36 condition, a statement that the employee is needed to care for the
37 family member and an estimate of the amount of time that such
38 employee is needed to care for the family member; and

1 (ii) For purposes of leave for the employee's serious health
2 condition, a statement that the employee is unable to perform the
3 functions of the position of the employee;

4 (e) In the case of certification for intermittent leave, or leave
5 on a reduced leave schedule, for planned medical treatment, the dates
6 on which the treatment is expected to be given and the duration of
7 the treatment;

8 (f) In the case of certification for intermittent leave, or leave
9 on a reduced leave schedule, for the employee's serious health
10 condition, a statement of the medical necessity for the intermittent
11 leave or leave on a reduced leave schedule, and the expected duration
12 of the intermittent leave or reduced leave schedule; and

13 (g) In the case of certification for intermittent leave, or leave
14 on a reduced leave schedule, for a family member's serious health
15 condition, a statement that the employee's intermittent leave or
16 leave on a reduced leave schedule is necessary for the care of the
17 family member who has a serious health condition, or will assist in
18 their recovery, and the expected duration and schedule of the
19 intermittent leave or reduced leave schedule.

20 (3) If the employer has reason to doubt the validity of the
21 certification provided under subsection (1) of this section for leave
22 for a family member's serious health condition or the employee's
23 serious health condition, the employer may require, at the expense of
24 the employer, that the employee obtain the opinion of a second health
25 care provider designated or approved by the employer concerning any
26 information certified under subsection (2) of this section for the
27 leave. The second health care provider may not be employed on a
28 regular basis by the employer.

29 (4) If the second opinion described in subsection (3) of this
30 section differs from the opinion in the original certification
31 provided under subsection (1) of this section, the employer may
32 require, at the expense of the employer, that the employee obtain the
33 opinion of a third health care provider designated or approved
34 jointly by the employer and the employee concerning the information
35 certified under subsection (2) of this section. The opinion of the
36 third health care provider concerning the information certified under
37 subsection (2) of this section is considered to be final and is
38 binding on the employer and the employee.

1 (5) The employer or department may require that the employee
2 obtain subsequent recertifications on a reasonable basis, but not
3 more often than once each week.

4 (6) Failure to furnish notice or proof within the time and in the
5 manner required does not invalidate the application for family leave,
6 but benefits are not required to be paid for any period more than two
7 weeks prior to the date on which the required notice and proof is
8 furnished. If it is shown to the satisfaction of the commissioner not
9 to have been reasonably possible to furnish such notice or proof and
10 that such notice or proof was furnished as soon as possible, the
11 commissioner must pay the benefits for the full period of a valid
12 application.

13 (7) Benefits are not required to be paid unless the required
14 proof is furnished within the period of family leave that does not
15 exceed the statutory maximum period permitted under this chapter.

16 (8) The commissioner may direct the family leave care recipient
17 to submit to examination by a health care provider designated by him
18 or her in any case in which the family leave benefits are contested.
19 The department shall pay for the cost of such examination and pay the
20 benefits for a reasonable period to allow for the examination to
21 occur and the medical results to be delivered.

22 (9) Refusal of the family leave care recipient without good cause
23 to submit to any such examination shall disqualify the employee from
24 all benefits under this chapter for the period of such refusal,
25 except as to benefits already paid. The department must provide the
26 employer with notice of the refusal within a reasonable time.

27 (10) If benefits required to be paid under this chapter have been
28 paid to an employee, further payments for the same family leave are
29 not barred solely because of failure to give notice or to file proof
30 for the period or periods for which such benefits have been paid, so
31 long as notice and proof are given for the current period.

32 NEW SECTION. Sec. 15. (1) The department shall establish and
33 administer a family leave program and pay family leave insurance
34 benefits as specified in this chapter.

35 (2) The department shall establish procedures and forms for
36 filing applications for benefits under this chapter. The department
37 shall notify the employer within five business days of an application
38 being filed.

1 (3) The department shall use information sharing and integration
2 technology to facilitate the disclosure of relevant information or
3 records by the department, so long as an employee consents to the
4 disclosure as required under section 16 of this act.

5 (4) Information contained in the files and records pertaining to
6 an employee under this chapter are confidential and not open to
7 public inspection, other than to public employees in the performance
8 of their official duties. However, the employee or an authorized
9 representative of an employee may review the records or receive
10 specific information from the records on the presentation of the
11 signed authorization of the employee. An employer or the employer's
12 duly authorized representative may review the records of an employee
13 employed by the employer in connection with a pending application. At
14 the department's discretion, other persons may review records when
15 such persons are rendering assistance to the department at any stage
16 of the proceedings on any matter pertaining to the administration of
17 this chapter.

18 (5) The department shall develop and implement an outreach
19 program to ensure that employees who may be qualified to receive
20 family leave benefits under this chapter are made aware of these
21 benefits. Outreach information shall explain, in an easy to
22 understand format, eligibility requirements, the application process,
23 weekly benefit amounts, maximum benefits payable, notice and
24 certification requirements, reinstatement and nondiscrimination
25 rights, confidentiality, and the relationship between employment
26 protection, leave from employment, and wage replacement benefits
27 under this chapter and other laws, collective bargaining agreements,
28 and employer policies. Outreach information shall be available in
29 English and other primary languages as defined in RCW 74.04.025.

30 NEW SECTION. **Sec. 16.** Family leave insurance benefits are
31 payable to an employee during a period in which the employee is
32 unable to perform his or her regular or customary work because he or
33 she is on family leave, as defined in RCW 49.78.020 (as recodified by
34 this act), if the employee:

35 (1) Files an application for benefits as required by rules
36 adopted by the commissioner;

37 (2) Consents to the disclosure of information or records deemed
38 private and confidential under state law. Further disclosure of this
39 information or these records is subject to section 15 of this act;

1 (3) Discloses whether or not he or she owes child support
2 obligations as defined in RCW 50.40.050;

3 (4) Provides his or her social security number;

4 (5) Has provided his or her employer from whom family leave is to
5 be taken with written notice of the employee's intention to take
6 family leave as required in RCW 49.78.250 (as recodified by this
7 act); and

8 (6) Provides a document authorizing the family member's or
9 employee's health care provider, as applicable, to disclose the
10 family member's or employee's health care information in the form of
11 the certification required under RCW 49.78.270 (as recodified by this
12 act).

13 NEW SECTION. **Sec. 17.** If an employee does not have a spouse,
14 the employee may designate one person for whom the employee will care
15 for if the designated person has a serious health condition. An
16 employer may establish a process for an employee to make such a
17 designation within thirty days of the employee's date of hire.
18 Thereafter, the employer must permit the employee to make or change
19 such a designation, as applicable, on an annual basis. If an
20 employee's employer establishes such a process, the employee must
21 make such a designation using the employer's process. If an
22 employee's employer does not establish such a process, the employee
23 may make such a designation when applying for benefits.

24 NEW SECTION. **Sec. 18.** If an employee discloses that he or she
25 owes child support obligations under section 16 of this act and the
26 department determines that the employee is qualified for benefits,
27 the department shall notify the applicable state or local child
28 support enforcement agency and deduct and withhold an amount from
29 benefits in a manner consistent with RCW 50.40.050.

30 **Sec. 19.** RCW 49.78.280 and 2006 c 59 s 9 are each amended to
31 read as follows:

32 (1)~~((a))~~ Except as provided in ~~((b) of this))~~ subsection (2)
33 of this section, any employee who takes leave under RCW 49.78.220 (as
34 recodified by this act) for the intended purpose of the leave is
35 entitled, on return from the leave:

36 ~~((i))~~ (a) To be restored by the employer to the position of
37 employment held by the employee when the leave commenced; or

1 ~~((+ii))~~ (b) To be restored to an equivalent position with
2 equivalent employment benefits, pay, and other terms and conditions
3 of employment at a workplace within twenty miles of the employee's
4 workplace when leave commenced.

5 ~~((+b))~~ (2) The taking of leave under RCW 49.78.220 (as
6 recodified by this act) may not result in the loss of any employment
7 benefits accrued before the date on which the leave commenced.

8 ~~((+e))~~ (3) Nothing in this section entitles any restored
9 employee to:

10 ~~((+i))~~ (a) The accrual of any seniority or employment benefits
11 during any period of leave; or

12 ~~((+ii))~~ (b) Any right, benefit, or position of employment other
13 than any right, benefit, or position to which the employee would have
14 been entitled had the employee not taken the leave.

15 ~~((+d))~~ (4) As a condition of restoration under ~~((+a) of this)~~
16 subsection (1) of this section for an employee who has taken leave
17 for the employee's serious health condition, the employer may have a
18 uniformly applied practice or policy that requires each such employee
19 to receive certification from the health care provider of the
20 employee that the employee is able to resume work, except that
21 nothing in this subsection ~~((+1)(d))~~ supersedes a valid local law or
22 a collective bargaining agreement that governs the return to work of
23 such employees.

24 ~~((+e))~~ (5) Nothing in this ~~((subsection (1)))~~ section prohibits
25 an employer from requiring an employee on leave to report
26 periodically to the employer on the status and intention of the
27 employee to return to work.

28 ~~((+2) An employer may deny restoration under subsection (1) of~~
29 ~~this section to any salaried employee who is among the highest paid~~
30 ~~ten percent of the employees employed by the employer within~~
31 ~~seventy-five miles of the facility at which the employee is employed~~
32 ~~if:~~

33 ~~(a) Denial is necessary to prevent substantial and grievous~~
34 ~~economic injury to the operations of the employer;~~

35 ~~(b) The employer notifies the employee of the intent of the~~
36 ~~employer to deny restoration on such basis at the time the employer~~
37 ~~determines that the injury would occur; and~~

38 ~~(c) The leave has commenced and the employee elects not to return~~
39 ~~to employment after receiving the notice.)~~

1 NEW SECTION. **Sec. 20.** (1) If family leave benefits are paid
2 erroneously or as a result of willful misrepresentation, or if an
3 application or weekly claim for family leave benefits is rejected
4 after benefits are paid, RCW 50.20.070 applies, except that appeals
5 are governed by section 22 of this act, penalties are paid into the
6 family and medical leave enforcement account, and the department
7 shall seek repayment of benefits from the recipient. The department
8 shall issue an overpayment assessment setting forth the reasons for,
9 and the amount of, the overpayment.

10 (2) Whenever such an overpayment assessment becomes conclusive
11 and final, the department may file with the superior court clerk of
12 any county within the state a warrant in the amount of the
13 overpayment assessment plus a filing fee under RCW 36.18.012(10).
14 However, the department must first give at least twenty days' notice
15 by certified mail return receipt requested, to the employee's last
16 known address of the intended action.

17 (a) The clerk of the county where the warrant is filed shall
18 immediately designate a superior court cause number for the warrant.
19 The clerk shall cause to be entered in the judgment docket under the
20 superior court cause number assigned to the warrant the name of the
21 person or persons mentioned in the warrant, the amount of the
22 overpayment assessment, and the date when the warrant was filed.

23 (b) The amount of the warrant as docketed becomes a lien upon the
24 title to, and any interest in, all real and personal property of the
25 person or persons against whom the warrant is issued, the same as a
26 judgment in a civil case duly docketed in the office of the clerk. A
27 warrant so docketed is sufficient to support the issuance of writs of
28 execution and writs of garnishment in favor of the state in the
29 manner provided by law for a civil judgment.

30 (c) A copy of the warrant shall be mailed to the person or
31 persons mentioned in the warrant by certified mail to the person's
32 last known address within ten days of its filing with the clerk.

33 NEW SECTION. **Sec. 21.** (1) In the form and at the times
34 specified in this chapter and by the commissioner, an employer shall
35 make reports, furnish information, and collect and remit premiums as
36 required by this chapter to the department. If the employer is a
37 temporary help company that provides employees on a temporary basis
38 to its customers, the temporary help company is considered the
39 employer for purposes of this section. However, if the temporary help

1 company fails to remit the required premiums, the customer to whom
2 the employees were provided is liable for paying the premiums.

3 (2)(a) An employer must keep at his or her place of business a
4 record of employment from which the information needed by the
5 department for purposes of this chapter may be obtained. This record
6 shall at all times be open to the inspection of the commissioner.

7 (b) Information obtained from employer records under this chapter
8 is confidential and not open to public inspection, other than to
9 public employees in the performance of their official duties.
10 However, an interested party shall be supplied with information from
11 employer records to the extent necessary for the proper presentation
12 of the case in question. An employer may authorize inspection of its
13 records by written consent.

14 (3) The requirements relating to the collection of family leave
15 premiums are the same as the requirements relating to the assessment
16 and collection of contributions under Title 50 RCW, including but not
17 limited to penalties, interest, and department lien rights and
18 collection remedies. These requirements apply to:

19 (a) An employer that fails under this chapter to make the
20 required reports, or fails to remit the full amount of the premiums
21 when due;

22 (b) An employer that willfully makes a false statement or
23 misrepresentation regarding a material fact, or willfully fails to
24 report a material fact, to avoid making the required reports or
25 remitting the full amount of the premiums when due under this
26 chapter;

27 (c) A successor in the manner specified in RCW 50.24.210; and

28 (d) An officer, member, or owner having control or supervision of
29 payment and/or reporting of family leave premiums, or who is charged
30 with the responsibility for the filing of returns, in the manner
31 specified in RCW 50.24.230.

32 (4) Notwithstanding subsection (3) of this section, appeals are
33 governed by section 22 of this act.

34 NEW SECTION. **Sec. 22.** (1) Except as provided under section
35 23(1) of this act, a person may file a notice of appeal from any
36 determination or redetermination made by the department with the
37 commissioner, by mail or personally, within thirty days after the
38 date on which a copy of the department's decision was served on the
39 person. Upon receipt of the notice of appeal, the commissioner shall

1 request the assignment of an administrative law judge in accordance
2 with chapter 34.05 RCW to conduct a hearing and issue a proposed
3 decision and order. The hearing shall be conducted in accordance with
4 chapter 34.05 RCW.

5 (2) The administrative law judge's proposed decision and order
6 shall be final and not subject to further appeal unless, within
7 thirty days after the decision is served on the interested parties, a
8 party files a petition for judicial review as provided in chapter
9 34.05 RCW.

10 (3) If, upon judicial review, the final decision of the
11 department is reversed or modified, the court in its discretion may
12 award the prevailing party, other than the department, reasonable
13 attorneys' fees and costs. Attorneys' fees and costs owed by the
14 department, if any, are payable from the family and medical leave
15 enforcement account.

16 NEW SECTION. **Sec. 23.** (1) A determination of amount of benefits
17 potentially payable under this chapter is not a basis for appeal.
18 However, the determination is subject to request by the employee on
19 family leave for redetermination by the commissioner at any time
20 within one year from the date of delivery or mailing of such
21 determination, or any redetermination thereof. A redetermination
22 shall be furnished to the employee in writing and provide the basis
23 for appeal.

24 (2) A determination of denial of benefits becomes final, in the
25 absence of timely appeal therefrom. The commissioner may redetermine
26 such determinations at any time within one year from delivery or
27 mailing to correct an error in identity, omission of fact, or
28 misapplication of law with respect to the facts.

29 (3) A determination of allowance of benefits becomes final, in
30 the absence of a timely appeal therefrom. The commissioner may
31 redetermine such allowance at any time within two years following the
32 application year in which such allowance was made in order to recover
33 any benefits for which recovery is provided under this chapter.

34 (4) A redetermination may be made at any time: (a) To conform to
35 a final court decision applicable to either an initial determination
36 or a determination of denial or allowance of benefits; (b) in the
37 event of a back pay award or settlement affecting the allowance of
38 benefits; or (c) in the case of misrepresentation or willful failure
39 to report a material fact. Written notice of any such redetermination

1 shall be promptly given by mail or delivered to such interested
2 parties as were notified of the initial determination or
3 determination of denial or allowance of benefits and any new
4 interested party or parties who, pursuant to such rule as the
5 commissioner may adopt, would be an interested party.

6 NEW SECTION. **Sec. 24.** (1) Leave from employment under this
7 chapter is in addition to leave from employment during which benefits
8 are paid or are payable under Title 51 RCW or other applicable
9 federal or state industrial insurance laws.

10 (2) In any week in which an employee is receiving benefits under
11 chapter 7.68 RCW, Title 50 or 51 RCW, or other applicable federal or
12 state crime victims' compensation, unemployment compensation,
13 industrial insurance, or disability insurance laws, the employee is
14 disqualified from receiving family leave benefits under this chapter.

15 **Sec. 25.** RCW 49.78.290 and 2006 c 59 s 10 are each amended to
16 read as follows:

17 In accordance with the federal family and medical leave act,
18 during any period of family leave taken under ((RCW 49.78.220)) this
19 chapter, ((if the employee is not eligible for any employer
20 contribution to medical or dental benefits under an applicable
21 collective bargaining agreement or employer policy during any period
22 of leave, an employer shall allow the employee to continue, at the
23 employee's expense, medical or dental insurance coverage, including
24 any spouse and dependent coverage, in accordance with state or
25 federal law. The premium to be paid by the employee shall not exceed
26 one hundred two percent of the applicable premium for the leave
27 period)) the employer shall maintain any existing health benefits of
28 the employee in force for the duration of such leave as if the
29 employee had continued to work from the date he or she commenced
30 family leave until the date he or she returns to employment.

31 NEW SECTION. **Sec. 26.** Whenever an employee of a covered
32 employer who is qualified for benefits under this chapter is absent
33 from work to provide family leave for more than seven consecutive
34 days, the employer shall provide the employee with a written
35 statement of the employee's rights under this chapter in a form
36 prescribed by the commissioner. The statement must be provided to the
37 employee within five business days after the employee's seventh

1 consecutive day of absence due to family leave or within five
2 business days after the employer has received notice that the
3 employee's absence is due to family leave, whichever is later.

4 **Sec. 27.** RCW 49.78.300 and 2006 c 59 s 11 are each amended to
5 read as follows:

6 (1) It is unlawful for any employer to:

7 (a) Interfere with, restrain, or deny the exercise of, or the
8 attempt to exercise, any valid right provided under this chapter; or

9 (b) Discharge or in any other manner discriminate against any
10 (~~individual~~) employee for opposing any practice made unlawful by
11 this chapter.

12 (2) It is unlawful for any person to discharge or in any other
13 manner discriminate against any (~~individual~~) employee because the
14 (~~individual~~) employee has:

15 (a) Filed any charge, or has instituted or caused to be
16 instituted any proceeding, under or related to this chapter;

17 (b) Given, or is about to give, any information in connection
18 with any inquiry or proceeding relating to any right provided under
19 this chapter; or

20 (c) Testified, or is about to testify, in any inquiry or
21 proceeding relating to any right provided under this chapter.

22 **Sec. 28.** RCW 49.78.310 and 2006 c 59 s 12 are each amended to
23 read as follows:

24 Upon complaint by an employee, the (~~director~~) commissioner
25 shall investigate to determine if there has been compliance with this
26 chapter and the rules adopted under this chapter. If the
27 investigation indicates that a violation may have occurred, a hearing
28 must be held in accordance with chapter 34.05 RCW. The (~~director~~)
29 commissioner must issue a written determination including his or her
30 findings after the hearing. A judicial appeal from the (~~director's~~)
31 commissioner's determination may be taken in accordance with chapter
32 34.05 RCW, with the prevailing party entitled to recover reasonable
33 costs and attorneys' fees.

34 **Sec. 29.** RCW 49.78.330 and 2006 c 59 s 14 are each amended to
35 read as follows:

36 (1) Any employer who violates RCW 49.78.300 (as recodified by
37 this act) is liable:

1 (a) For damages equal to:
2 (i) The amount of:
3 (A) Any wages, salary, employment benefits, or other compensation
4 denied or lost to such employee by reason of the violation; or
5 (B) In a case in which wages, salary, employment benefits, or
6 other compensation have not been denied or lost to the employee, any
7 actual monetary losses sustained by the employee as a direct result
8 of the violation, such as the cost of providing care, up to a sum
9 equal to twelve weeks of wages or salary for the employee;
10 (ii) The interest on the amount described in (a)(i) of this
11 subsection calculated at the prevailing rate; and
12 (iii) An additional amount as liquidated damages equal to the sum
13 of the amount described in (a)(i) of this subsection and the interest
14 described in (a)(ii) of this subsection, except that if an employer
15 who has violated RCW 49.78.300 (as recodified by this act) proves to
16 the satisfaction of the court that the act or omission which violated
17 RCW 49.78.300 (as recodified by this act) was in good faith and that
18 the employer had reasonable grounds for believing that the act or
19 omission was not a violation of RCW 49.78.300, the court may, in the
20 discretion of the court, reduce the amount of the liability to the
21 amount and interest determined under (a)(i) and (ii) of this
22 subsection, respectively; and
23 (b) For such equitable relief as may be appropriate, including
24 employment, reinstatement, and promotion.
25 (2) An action to recover the damages or equitable relief
26 prescribed in subsection (1) of this section may be maintained
27 against any employer in any court of competent jurisdiction by any
28 one or more employees for and on behalf of:
29 (a) The employees; or
30 (b) The employees and other employees similarly situated.
31 (3) The court in such an action shall, in addition to any
32 judgment awarded to the plaintiff, allow reasonable attorneys' fees,
33 reasonable expert witness fees, and other costs of the action to be
34 paid by the defendant.

35 **Sec. 30.** RCW 49.78.340 and 2006 c 59 s 15 are each amended to
36 read as follows:

37 Each employer shall post and keep posted, in conspicuous places
38 on the premises of the employer where notices to employees and
39 applicants for employment are customarily posted, a notice, to be

1 prepared or approved by the (~~director~~) commissioner, setting forth
2 excerpts from, or summaries of, the pertinent provisions of this
3 chapter and information pertaining to the filing of a charge. Any
4 employer that willfully violates this section may be subject to a
5 civil penalty of not more than one hundred dollars for each separate
6 offense. Any penalties collected by the department under (~~the~~
7 ~~[this]~~) this section shall be deposited into the family and medical
8 leave enforcement account.

9 **Sec. 31.** RCW 49.78.350 and 2006 c 59 s 16 are each amended to
10 read as follows:

11 The family and medical leave enforcement account is created in
12 the custody of the state treasurer. Any penalties collected under RCW
13 49.78.320 (as recodified by this act) or 49.78.340 (as recodified by
14 this act) shall be deposited into the account and shall be used only
15 for the purposes of administering and enforcing this chapter. Only
16 the (~~director or the director's designee~~) commissioner may
17 authorize expenditures from the account. The account is subject to
18 allotment procedures under chapter 43.88 RCW, but an appropriation is
19 not required for expenditures.

20 **Sec. 32.** RCW 49.78.360 and 2006 c 59 s 17 are each amended to
21 read as follows:

22 (1) Nothing in this chapter shall be construed(~~(;-(1))~~) to modify
23 or affect any state or local law prohibiting discrimination on the
24 basis of race, religion, color, national origin, sex, age, or
25 disability(~~(; or (2) to supersede any provision of any local law that~~
26 provides greater family or medical leave rights than the rights
27 established under this chapter)).

28 (2) The state of Washington fully occupies and preempts the
29 entire field of the governmental regulation of mandatory paid family
30 leave for all private employers covered by the provisions of this
31 act. Nothing in this chapter prevents a private employer from
32 providing greater family or medical leave benefits than those
33 established under this chapter. Cities, towns, and counties or other
34 political subdivisions may enact only those laws and ordinances
35 relating to paid family leave for private employers that are
36 specifically authorized by state law and are consistent with this
37 chapter. Local laws and ordinances regarding paid family leave for
38 private employers, in existence on the effective date of this section

1 that are inconsistent with this chapter are preempted and repealed,
2 regardless of the nature of the code, charter, or home rule status of
3 such a city, town, county, or political subdivision.

4 **Sec. 33.** RCW 49.78.380 and 2006 c 59 s 19 are each amended to
5 read as follows:

6 Nothing in this chapter shall be construed to discourage private
7 employers from adopting or retaining leave policies more generous
8 than any policies that comply with the requirements under this
9 chapter.

10 **Sec. 34.** RCW 49.78.390 and 2006 c 59 s 20 are each amended to
11 read as follows:

12 (1) Leave under this chapter and leave under the federal family
13 and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107
14 Stat. 6) is in addition to any leave for sickness or temporary
15 disability because of pregnancy or childbirth.

16 (2) Unless otherwise expressly permitted by the employer, leave
17 taken under this chapter must be taken concurrently with any leave
18 taken under the federal family and medical leave act of 1993 (Act
19 Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

20 NEW SECTION. **Sec. 35.** (1) If the internal revenue service
21 determines that family leave benefits under this chapter are subject
22 to federal income tax, the department must advise an employee filing
23 a new application for family leave benefits, at the time of filing
24 such application, that:

25 (a) The internal revenue service has determined that benefits are
26 subject to federal income tax;

27 (b) Requirements exist pertaining to estimated tax payments;

28 (c) The employee may elect to have federal income tax deducted
29 and withheld from the employee's payment of benefits at the amount
30 specified in the federal internal revenue code; and

31 (d) The employee is permitted to change a previously elected
32 withholding status.

33 (2) Amounts deducted and withheld from benefits must remain in
34 the family leave insurance account until transferred to the federal
35 taxing authority as a payment of income tax.

1 (3) The commissioner shall follow all procedures specified by the
2 federal internal revenue service pertaining to the deducting and
3 withholding of income tax.

4 NEW SECTION. **Sec. 36.** This chapter does not create a continuing
5 entitlement or contractual right. The legislature reserves the right
6 to amend or repeal all or part of this chapter at any time, and a
7 benefit or other right granted under this chapter exists subject to
8 the legislature's power to amend or repeal this chapter. There is no
9 vested private right of any kind against such amendment or repeal.

10 NEW SECTION. **Sec. 37.** The family leave insurance account is
11 created in the custody of the state treasurer. All receipts from the
12 employee premiums imposed under this chapter must be deposited in the
13 account. Expenditures from the account may be used only for the
14 purposes of the family leave program. Only the commissioner may
15 authorize expenditures from the account. The account is subject to
16 the allotment procedures under chapter 43.88 RCW. An appropriation is
17 required for administrative expenses, but not for benefit payments.

18 NEW SECTION. **Sec. 38.** Whenever, in the judgment of the state
19 investment board, there shall be in the family leave insurance
20 account funds in excess of that amount deemed by the state investment
21 board to be sufficient to meet the current expenditures properly
22 payable therefrom, the state investment board shall have full power
23 to invest, reinvest, manage, contract, or sell or exchange
24 investments acquired with such excess funds in the manner prescribed
25 by RCW 43.84.150, and not otherwise.

26 **Sec. 39.** RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are
27 each reenacted and amended to read as follows:

28 (1) This section applies to benefits charged to the experience
29 rating accounts of employers for claims that have an effective date
30 on or after January 4, 2004.

31 (2)(a) An experience rating account shall be established and
32 maintained for each employer, except employers as described in RCW
33 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
34 payments in lieu of contributions, taxable local government employers
35 as described in RCW 50.44.035, and those employers who are required

1 to make payments in lieu of contributions, based on existing records
2 of the employment security department.

3 (b) Benefits paid to an eligible individual shall be charged to
4 the experience rating accounts of each of such individual's employers
5 during the individual's base year in the same ratio that the wages
6 paid by each employer to the individual during the base year bear to
7 the wages paid by all employers to that individual during that base
8 year, except as otherwise provided in this section.

9 (c) When the eligible individual's separating employer is a
10 covered contribution paying base year employer, benefits paid to the
11 eligible individual shall be charged to the experience rating account
12 of only the individual's separating employer if the individual
13 qualifies for benefits under:

14 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and
15 became unemployed after having worked and earned wages in the bona
16 fide work; or

17 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
18 (x).

19 (3) The legislature finds that certain benefit payments, in whole
20 or in part, should not be charged to the experience rating accounts
21 of employers except those employers described in RCW 50.44.010,
22 50.44.030, and 50.50.030 who have properly elected to make payments
23 in lieu of contributions, taxable local government employers
24 described in RCW 50.44.035, and those employers who are required to
25 make payments in lieu of contributions, as follows:

26 (a) Benefits paid to any individual later determined to be
27 ineligible shall not be charged to the experience rating account of
28 any contribution paying employer, except as provided in subsection
29 (5) of this section.

30 (b) Benefits paid to an individual filing under the provisions of
31 chapter 50.06 RCW shall not be charged to the experience rating
32 account of any contribution paying employer only if:

33 (i) The individual files under RCW 50.06.020(1) after receiving
34 crime victims' compensation for a disability resulting from a
35 nonwork-related occurrence; or

36 (ii) The individual files under RCW 50.06.020(2).

37 (c) Benefits paid which represent the state's share of benefits
38 payable as extended benefits defined under RCW 50.22.010(6) shall not
39 be charged to the experience rating account of any contribution
40 paying employer.

1 (d) In the case of individuals who requalify for benefits under
2 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned
3 prior to the disqualifying separation shall not be charged to the
4 experience rating account of the contribution paying employer from
5 whom that separation took place.

6 (e) Benefits paid to an individual who qualifies for benefits
7 under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as
8 applicable, shall not be charged to the experience rating account of
9 any contribution paying employer.

10 (f) With respect to claims with an effective date on or after the
11 first Sunday following April 22, 2005, benefits paid that exceed the
12 benefits that would have been paid if the weekly benefit amount for
13 the claim had been determined as one percent of the total wages paid
14 in the individual's base year shall not be charged to the experience
15 rating account of any contribution paying employer. This subsection
16 (3)(f) does not apply to the calculation of contribution rates under
17 RCW 50.29.025 for rate year 2010 and thereafter.

18 (g) The forty-five dollar increase paid as part of an
19 individual's weekly benefit amount as provided in RCW 50.20.1201 and
20 the twenty-five dollar increase paid as part of an individual's
21 weekly benefit amount as provided in RCW 50.20.1202 shall not be
22 charged to the experience rating account of any contribution paying
23 employer.

24 (h) With respect to claims where the minimum amount payable
25 weekly is increased to one hundred fifty-five dollars pursuant to RCW
26 50.20.1201(3), benefits paid that exceed the benefits that would have
27 been paid if the minimum amount payable weekly had been calculated
28 pursuant to RCW 50.20.120 shall not be charged to the experience
29 rating account of any contribution paying employer.

30 (i) Upon approval of an individual's training benefits plan
31 submitted in accordance with RCW 50.22.155(2), an individual is
32 considered enrolled in training, and regular benefits beginning with
33 the week of approval shall not be charged to the experience rating
34 account of any contribution paying employer.

35 (j) Training benefits paid to an individual under RCW 50.22.155
36 shall not be charged to the experience rating account of any
37 contribution paying employer.

38 (4)(a) A contribution paying base year employer, except employers
39 as provided in subsection (6) of this section, not otherwise eligible
40 for relief of charges for benefits under this section, may receive

1 such relief if the benefit charges result from payment to an
2 individual who:

3 (i) Last left the employ of such employer voluntarily for reasons
4 not attributable to the employer;

5 (ii) Was discharged for misconduct or gross misconduct connected
6 with his or her work not a result of inability to meet the minimum
7 job requirements;

8 (iii) Is unemployed as a result of closure or severe curtailment
9 of operation at the employer's plant, building, worksite, or other
10 facility. This closure must be for reasons directly attributable to a
11 catastrophic occurrence such as fire, flood, or other natural
12 disaster;

13 (iv) Continues to be employed on a regularly scheduled permanent
14 part-time basis by a base year employer and who at some time during
15 the base year was concurrently employed and subsequently separated
16 from at least one other base year employer. Benefit charge relief
17 ceases when the employment relationship between the employer
18 requesting relief and the claimant is terminated. This subsection
19 does not apply to shared work employers under chapter 50.60 RCW;

20 (v) Continues to be employed on a regularly scheduled permanent
21 part-time basis by a base year employer and who qualified for two
22 consecutive unemployment claims where wages were attributable to at
23 least one employer who employed the individual in both base years.
24 Benefit charge relief ceases when the employment relationship between
25 the employer requesting relief and the claimant is terminated. This
26 subsection does not apply to shared work employers under chapter
27 50.60 RCW; ((~~or~~))

28 (vi) Was hired to replace an employee who is a member of the
29 military reserves or National Guard and was called to federal active
30 military service by the president of the United States and is
31 subsequently laid off when that employee is reemployed by their
32 employer upon release from active duty within the time provided for
33 reemployment in RCW 73.16.035; or

34 (vii) Worked for an employer for forty weeks or less, and was
35 laid off at the end of temporary employment when that individual
36 temporarily replaced a permanent employee receiving family leave
37 benefits under chapter 50.--- RCW (the new chapter created in section
38 41 of this act), and the layoff is due to the return of that
39 permanent employee. This subsection applies to claims with an
40 effective date on or after July 7, 2019.

1 (b) The employer requesting relief of charges under this
2 subsection must request relief in writing within thirty days
3 following mailing to the last known address of the notification of
4 the valid initial determination of such claim, stating the date and
5 reason for the separation or the circumstances of continued
6 employment. The commissioner, upon investigation of the request,
7 shall determine whether relief should be granted.

8 (5) When a benefit claim becomes invalid due to an amendment or
9 adjustment of a report where the employer failed to report or
10 inaccurately reported hours worked or remuneration paid, or both, all
11 benefits paid will be charged to the experience rating account of the
12 contribution paying employer or employers that originally filed the
13 incomplete or inaccurate report or reports. An employer who
14 reimburses the trust fund for benefits paid to workers and who fails
15 to report or inaccurately reported hours worked or remuneration paid,
16 or both, shall reimburse the trust fund for all benefits paid that
17 are based on the originally filed incomplete or inaccurate report or
18 reports.

19 (6) An employer's experience rating account may not be relieved
20 of charges for a benefit payment and an employer who reimburses the
21 trust fund for benefit payments may not be credited for a benefit
22 payment if a benefit payment was made because the employer or
23 employer's agent failed to respond timely or adequately to a written
24 request of the department for information relating to the claim or
25 claims without establishing good cause for the failure and the
26 employer or employer's agent has a pattern of such failures. The
27 commissioner has the authority to determine whether the employer has
28 good cause under this subsection.

29 (a) For the purposes of this subsection, "adequately" means
30 providing accurate information of sufficient quantity and quality
31 that would allow a reasonable person to determine eligibility for
32 benefits.

33 (b)(i) For the purposes of this subsection, "pattern" means a
34 benefit payment was made because the employer or employer's agent
35 failed to respond timely or adequately to a written request of the
36 department for information relating to a claim or claims without
37 establishing good cause for the failure, if the greater of the
38 following calculations for an employer is met:

39 (A) At least three times in the previous two years; or

1 (B) Twenty percent of the total current claims against the
2 employer.

3 (ii) If an employer's agent is utilized, a pattern is established
4 based on each individual client employer that the employer's agent
5 represents.

6 **Sec. 40.** RCW 49.78.400 and 2006 c 59 s 21 are each amended to
7 read as follows:

8 The (~~director~~) commissioner shall adopt rules as necessary to
9 implement this chapter.

10 NEW SECTION. **Sec. 41.** RCW 49.78.010, 49.78.020, 49.78.220,
11 49.78.230, 49.78.250, 49.78.260, 49.78.270, 49.78.280, 49.78.290,
12 49.78.300, 49.78.310, 49.78.320, 49.78.330, 49.78.340, 49.78.350,
13 49.78.360, 49.78.370, 49.78.380, 49.78.390, 49.78.400, 49.78.410,
14 49.78.901, and 49.78.904 are each recodified as a new chapter in
15 Title 50 RCW.

16 NEW SECTION. **Sec. 42.** The following acts or parts of acts are
17 each repealed:

18 (1) RCW 49.78.090 (Administration) and 1989 1st ex.s. c 11 s 9
19 are each repealed;

20 (2) RCW 49.78.240 (Unpaid leave permitted—Relationship to paid
21 leave) and 2006 c 59 s 5;

22 (3) RCW 49.86.005 (Findings) and 2007 c 357 s 1;

23 (4) RCW 49.86.010 (Definitions) and 2007 c 357 s 3;

24 (5) RCW 49.86.020 (Family leave insurance program) and 2007 c 357
25 s 4;

26 (6) RCW 49.86.030 (Eligibility for benefits) and 2013 2nd sp.s. c
27 26 s 1, 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;

28 (7) RCW 49.86.040 (Disqualification from benefits) and 2007 c 357
29 s 6;

30 (8) RCW 49.86.050 (Duration of benefits—Payment of benefits) and
31 2007 c 357 s 7;

32 (9) RCW 49.86.060 (Amount of benefits) and 2007 c 357 s 8;

33 (10) RCW 49.86.070 (Federal income tax) and 2007 c 357 s 9;

34 (11) RCW 49.86.080 (Erroneous payments—Payments induced by
35 willful misrepresentation—Claim rejected after payments) and 2007 c
36 357 s 10;

- 1 (12) RCW 49.86.090 (Leave and employment protection) and 2007 c
2 357 s 11;
- 3 (13) RCW 49.86.100 (Employment by same employer) and 2007 c 357 s
4 12;
- 5 (14) RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;
- 6 (15) RCW 49.86.120 (Appeals) and 2007 c 357 s 14;
- 7 (16) RCW 49.86.130 (Prohibited acts—Discrimination—Enforcement)
8 and 2007 c 357 s 15;
- 9 (17) RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;
- 10 (18) RCW 49.86.150 (Continuing entitlement or contractual rights—
11 Not created) and 2007 c 357 s 17;
- 12 (19) RCW 49.86.160 (Rules) and 2007 c 357 s 18;
- 13 (20) RCW 49.86.170 (Family leave insurance account) and 2009 c 4
14 s 905 & 2007 c 357 s 19;
- 15 (21) RCW 49.86.180 (Family leave insurance account funds—
16 Investment) and 2007 c 357 s 20;
- 17 (22) RCW 49.86.210 (Reports) and 2013 2nd sp.s. c 26 s 2, 2011
18 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;
- 19 (23) RCW 49.86.902 (Effective dates—2007 c 357) and 2007 c 357 s
20 30; and
- 21 (24) RCW 49.86.903 (Construction—Chapter applicable to state
22 registered domestic partnerships—2009 c 521) and 2009 c 521 s 136.

23 NEW SECTION. **Sec. 43.** Sections 3, 5 through 10, 15 through 18,
24 20 through 24, 26, and 35 through 38 of this act are each added to
25 chapter 50.--- RCW (the new chapter created in section 41 of this
26 act).

27 NEW SECTION. **Sec. 44.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 45.** Except for section 40 of this act, this
32 act takes effect January 1, 2019."

33 Correct the title.

EFFECT: (1) Changes eligibility for leave from 340 hours in the
qualifying year to 26 consecutive weeks, with provisions for part-

time workers and for portability between employers for 90 days. (Underlying bill allows benefits for part-time workers and does not require an individual be employed at the time of application.)

(2) Provides for premiums to be paid by employees and those electing coverage. Sets a maximum amount of wages subject to premiums as twice the state average weekly wage. (Maximum wage would be \$112,528, using most recent data.) Requires ESD to set the premium using sound actuarial principles. Provides for payment of premiums beginning January 1, 2019, rather than July 1, 2018.

(3) Creates special provisions for public sector employees: Represented employees may opt-in or out and employers of nonrepresented employees may opt-in or out, with notice.

(4) Modifies benefits to be 50 percent of an individual's average weekly wage, up to 50 percent of the state average weekly wage, and 8 weeks of leave, with phased in increases to 67 percent of average weekly wage, up to 67 percent of state average weekly wage, and 12 weeks of leave, in 2023 and thereafter. Provides for benefits to begin January 1, 2020, rather than October 1, 2019. Allows the Employment Security Department (ESD) to delay benefits, based on specified factors.

(5) Allows elective coverage by self-employed persons, but not independent contractors, and omits requirement that self-employed person have 340 hours after electing coverage before coverage begins.

(6) Provides for all individuals eligible for leave to be entitled to job protection.

(7) Limits leave for placement of a child to foster or adopted children and does not include siblings or persons with the equivalent to a family relationship in the definition of "family member." Allows a person without a spouse to designate a person for whom the employee will care.

(8) Specifies details of health care provider certification. Allows ESD to require the recipient of care to submit to an examination by a health care provider.

(9) Provides for ESD to administer all provisions. Excludes directive to ESD to adopt government efficiencies.

(10) Preempts paid leave for private employers by local governments.

(11) Requires (rather than allows) leave to be concurrent with federal Family and Medical Act leave, unless the employer permits otherwise.

(12) Amends and recodifies state family leave law.

--- END ---