

SHB 1116 - H AMD 250

By Representative Manweller

NOT CONSIDERED 01/05/2018

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

3

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

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

20

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

23 Unless the context clearly requires otherwise, the definitions
24 in this section apply throughout this chapter.

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

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

7 ~~((+2))~~ (3) "Commissioner" means the commissioner of the
8 department or the commissioner's designee.

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

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

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

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

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

30 (c) "Employee" does not include employees of the United States
31 of America.

32 (6) "Employee's average weekly wage" means one-thirteenth of the
33 total wages paid to an individual in the high quarter. For purposes
34 of this computation, the high quarter is that quarter in which the

1 individual's total wages were highest among the first four of the
2 last five completed calendar quarters immediately before the quarter
3 in which occurs the week with respect to which the computation is
4 made.

5 ~~((+5+))~~ (7)(a) "Employer" means: ((+a) Any person, firm,
6 corporation, partnership, business trust, legal representative, or
7 other business entity which engages in any business, industry,
8 profession, or activity in this state and includes any unit of local
9 government including, but not limited to, a county, city, town,
10 municipal corporation, quasi-municipal corporation, or political
11 subdivision, which employs fifty or more employees for each working
12 day during each of twenty or more calendar workweeks in the current
13 or preceding calendar year)) (i) Any individual or type of
14 organization, including any partnership, association, trust, estate,
15 joint stock company, insurance company, limited liability company,
16 or corporation, whether domestic or foreign, or the receiver,
17 trustee in bankruptcy, trustee, or the legal representative of a
18 deceased person, having any person in employment or, having become
19 an employer, has not ceased to be an employer as provided in this
20 title; ((+b+)) (ii) the state, state institutions, and state
21 agencies; and ((+e+)) (iii) any unit of local government including,
22 but not limited to, a county, city, town, municipal corporation,
23 quasi-municipal corporation, or political subdivision.

24 ~~((+6+))~~ (b) "Employer" does not include the United States of
25 America.

26 (8) "Employment" means personal service, of whatever nature,
27 unlimited by the relationship of master and servant as known to the
28 common law or any other legal relationship, including service in
29 interstate commerce, performed for wages or under any contract
30 calling for the performance of personal services, written or oral,
31 express or implied. "Employment" does not include self-employed
32 individuals.

33 (9) "Employment benefits" means all benefits provided or made
34 available to employees by an employer, including group life

1 insurance, health insurance, disability insurance, sick leave,
2 annual leave, educational benefits, and pensions except benefits
3 that are provided by a practice or written policy of an employer or
4 through an employee benefit plan as defined in 29 U.S.C. Sec.
5 1002(3).

6 ~~((+7))~~ (10) "Family leave" means any leave taken by an employee
7 from work:

8 (a) Made necessary by the employee's own serious health
9 condition;

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

13 (c) To bond with the employee's child during the first twelve
14 months after the child's birth, or the first twelve months after the
15 placement of the child for adoption or foster care with the
16 employee; or

17 (d) Because of any qualifying exigency as permitted under the
18 family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e) and 29
19 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on the
20 effective date of this section.

21 (11) "Family member" means a child, parent, grandparent,
22 grandchild, spouse, or state registered domestic partner of an
23 employee.

24 ~~((+8))~~ (12) "Grandchild" means a child of the employee's child.

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

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

32 ~~((+9))~~ (15) "Intermittent leave" is leave taken in separate
33 blocks of time due to a single qualifying reason.

34

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

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

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

7 ~~(13))~~ (16) "Parent" means the biological, foster, or adoptive
8 parent (~~(of an employee)~~), a parent-in-law, a step parent, a legal
9 guardian, or an individual who stood in loco parentis to an employee
10 when the employee was a child.

11 ~~((14))~~ (17) "Period of incapacity" means an inability to work,
12 attend school, or perform other regular daily activities because of
13 ~~(the)~~ a serious health condition, treatment of that condition or
14 recovery from it, or subsequent treatment in connection with such
15 inpatient care.

16 ~~((15))~~ (18) "Premium" or "premiums" means the payments
17 required by section 8 of this act and paid to the department for
18 deposit in the family leave insurance account under section 37 of
19 this act.

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

23 ~~((16))~~ (20)(a) "Serious health condition" means an illness,
24 injury, impairment, or physical or mental condition that involves:

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

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

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

33 (I) Treatment two or more times by a health care provider, by a
34 nurse or physician's assistant under direct supervision of a health

1 care provider, or by a provider of health care services under orders
2 of, or on referral by, a health care provider; or

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

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

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

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

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

16 (III) May cause episodic rather than a continuing period of
17 incapacity;

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

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

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

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

12 (c) Conditions for which cosmetic treatments are administered
13 are not "serious health conditions" unless inpatient hospital care
14 is required or unless complications develop. Unless complications
15 arise, the common cold, the flu, ear aches, upset stomach, minor
16 ulcers, 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

1 treatment from a health care provider during the absence, and even
2 if the absence does not last more than three days.

3 ~~((17))~~ (21) "Spouse" means a husband or wife, as the case may
4 be, or state registered domestic partner.

5 (22) "State average weekly wage" means the most recent average
6 weekly wage calculated under RCW 50.04.355 and available on January
7 1st of each year.

8

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

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

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

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

24

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

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

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

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

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

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

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

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

17
18 NEW SECTION. Sec. 5. (1) An employee is not entitled to family
19 leave benefits under this chapter:

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

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

25 (c) For any absence occasioned by the willful intention of the
26 employee to bring about injury to or the sickness of himself or
27 another, or resulting from any injury or sickness sustained in the
28 perpetration by the employee of an illegal act;

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

31 (e) For any day of family leave for which the employee is
32 entitled to receive from his or her employer, or from a fund to
33 which the employer has contributed, remuneration in an amount equal
34 to or greater than that to which he or she would be entitled under

1 this chapter; but any voluntary contribution or aid which an
2 employer may make to an employee or any supplementary benefit paid
3 to an employee pursuant to the provisions of a collective bargaining
4 agreement or from a trust fund to which contributions are made
5 pursuant to the provisions of a collective bargaining agreement is
6 not considered as continued remuneration or maintenance for this
7 purpose;

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

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

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

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

19 (j) For any day in which family leave care recipient works at
20 least part of that day for remuneration or profit for the covered
21 employer or for any other employer while working for remuneration or
22 profit, for him or herself, or another person or entity, during the
23 same or substantially similar working hours as those of the covered
24 employer from which family leave benefits are claimed, except that
25 occasional scheduling adjustments with respect to secondary
26 employments shall not prevent receipt of family leave benefits.

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

32 (3) During periods when the employee is receiving total
33 disability payments pursuant to a claim for workers' compensation
34 benefits, except that when the employee is receiving payments for

1 partial disability or reduced earnings under such laws, the family
2 leave benefit, when combined with the benefits under such laws shall
3 not exceed the average weekly wage in the employment for which
4 family leave benefits are sought.

5
6 NEW SECTION. **Sec. 6.** (1) Family leave benefits are payable to
7 a qualified employee for the first full day when family leave is
8 required and thereafter during the continuance of the need for
9 family leave, subject to the limitations as to maximum and minimum
10 amounts and duration and other conditions and limitations
11 established in this chapter. Successive periods of family leave
12 caused by the same or related injury or sickness are deemed a single
13 period of family leave only if separated by less than three months.

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

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

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

23 (c) On or after January 1, 2022, shall not exceed ten weeks
24 during any fifty-two week calendar period and shall be sixty percent
25 of the employee's average weekly wage but shall not exceed sixty
26 percent of the state average weekly wage; and

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

32 (3)(a) The commissioner has the discretion to delay the
33 increases in the family leave benefits provided in subsection
34 (2)(b), (c), and (d) of this section by one or more calendar years.

1 In determining whether to delay the increase in the family leave
2 benefit for any year, the commissioner shall consider:

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

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

8 (iii) The impact of the benefit increase on the financial
9 stability of the program; and

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

12 (b) If the commissioner delays the increase in the family leave
13 benefit level for one or more calendar years, the family leave
14 benefit level that takes effect immediately following the delay is
15 the same benefit level that would have taken effect but for the
16 delay.

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

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

25
26 NEW SECTION. **Sec. 7.** (1) Benefits provided under this chapter
27 shall be paid periodically and promptly, except when an employer
28 contests a period of family leave. The department must send the
29 first benefit payment to the employee within fourteen calendar days
30 after the first properly completed weekly application is received by
31 the department. Subsequent payments must be sent at least biweekly
32 thereafter. If the employer contests an initial application for
33 family leave benefits, the employer must notify the employee and the
34 department in a manner prescribed by the commissioner within

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

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

12
13 NEW SECTION. **Sec. 8.** (1) Beginning January 1, 2019, and each
14 year thereafter, every person in the employment of a covered
15 employer and every person electing coverage under section 9 of this
16 act must contribute to the cost of providing family leave benefits
17 under this chapter, by paying a premium calculated by multiplying
18 the premium rate as set in this section by the amount of the
19 employee's average weekly wages.

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

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

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

1 thousandths or more, in which case the fourth decimal place shall be
2 rounded to the next higher digit.

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

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

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

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

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

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

1 (2) An employer or self-employed person who has elected coverage
2 may withdraw from coverage within thirty days after the end of each
3 period of coverage, or at such other times as the commissioner may
4 adopt by rule, by filing a notice of withdrawal in writing with the
5 commissioner, such withdrawal to take effect not sooner than thirty
6 days after filing the notice with the commissioner. Within five days
7 of filing written notice of the withdrawal with the commissioner, an
8 employer must provide written notice of the withdrawal to all its
9 employees.

10 (3) The department may cancel elective coverage if the employer
11 or self-employed person fails to make required payments or file
12 reports. The department may collect due and unpaid premiums and may
13 levy an additional premium for the remainder of the period of
14 coverage. The cancellation shall be effective no later than thirty
15 days from the date of the notice in writing advising the employer or
16 self-employed person of the cancellation. Within five days of
17 receiving written notice of the cancellation from the commissioner,
18 an employer must provide written notice of the cancellation to all
19 its employees.

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

22
23 NEW SECTION. **Sec. 10.** (1) For purposes of this section,
24 "public employee" means any employee of the state, any political
25 subdivision of the state, a public authority or any other
26 governmental agency or instrumentality. "Public employer" means the
27 state, any political subdivision of the state, a public authority or
28 any other governmental agency or instrumentality thereof. "Employee
29 organization" means any lawful association, labor organization,
30 union, federation, council, or brotherhood, having as its primary
31 purpose the representation of employees on matters of employment
32 relations.

33

34

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

4 (3)(a) An employee organization may, pursuant to collective
5 bargaining, elect to participate in the family leave benefit
6 provisions in this chapter on behalf of those public employees it is
7 either certified or recognized to represent. This section does not
8 prohibit an agreement to elect to participate in family leave
9 benefits between the employee organization and any public employer.
10 An employee organization that has elected to participate in the
11 family leave benefit provisions in this chapter may, pursuant to
12 collective bargaining, terminate the election of it as is mutually
13 agreed upon between the employee organization and any public
14 employer.

15 (b) For public employees who are not represented by an employee
16 organization, the public employer may elect to participate in the
17 family leave benefit provisions in this chapter within ninety days'
18 notice to such public employees. All premiums for the benefits must
19 be paid by the employees. Following the election by a public
20 employer for public employees not represented by an employee
21 organization, the public employer may terminate the election of
22 family leave benefits with twelve months' notice to those public
23 employees.

24

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

27 (1)(a) When leave is taken after the birth or placement of a
28 child for adoption or foster care, an employee may take leave
29 intermittently or on a reduced leave schedule with the employer's
30 agreement. The employer's agreement is not required, however, for
31 leave during which the employee has a serious health condition in
32 connection with the birth of a child or if the newborn child has a
33 serious health condition.

34

1 (b) Leave may be taken intermittently or on a reduced leave
2 schedule when medically necessary for medical treatment of a serious
3 health condition by or under the supervision of a health care
4 provider, or for recovery from treatment or recovery from a serious
5 health condition. It may also be taken to provide care or
6 psychological comfort to ~~((an immediate))~~ a family member with a
7 serious health condition.

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

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

18 (c) ~~((There is no limit on the size of an increment of leave))~~
19 When an employee takes intermittent leave or leave on a reduced
20 leave schedule~~((. However, an employer may limit leave increments to~~
21 ~~the shortest period of time that the employer's payroll system uses~~
22 ~~to account for absences or use of leave, provided it is one hour or~~
23 ~~less))~~ , the leave must be in an increment of one day of the
24 employee's regularly scheduled employment.

25 (d) The taking of leave intermittently or on a reduced leave
26 schedule under this section may not result in a reduction in the
27 total amount of leave to which the employee is entitled under RCW
28 49.78.220 (as recodified by this act) beyond the amount of leave
29 actually taken.

30 (2) If an employee requests intermittent leave, or leave on a
31 reduced leave schedule, for a family member's serious health
32 condition or the employee's serious health condition when the
33 condition is foreseeable based on planned medical treatment, the
34 employer may require such employee to transfer temporarily to an

1 available alternative position offered by the employer for which the
2 employee is qualified and that:

3 (a) Has equivalent pay and benefits; and

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

6 (3) An employee who uses intermittent leave or leave on a
7 reduced leave schedule as provided in this section may be eligible
8 to use the sick leave or other paid time off as provided in RCW
9 49.12.270. An employee electing to use the benefits that may be
10 available under RCW 49.12.270 may not collect benefits payable under
11 this chapter for the same period of time.

12

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

15 (1) If the necessity for leave for the birth or placement of a
16 child for adoption or foster care with the employee is foreseeable
17 based on an expected birth or placement, the employee shall provide
18 the employer with not less than thirty days' notice, before the date
19 the leave is to begin, of the employee's intention to take leave for
20 the birth or placement of a child, except that if the date of the
21 birth or placement requires leave to begin in less than thirty days,
22 the employee shall provide such notice as is practicable.

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

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

30 (b) Must provide the employer with not less than thirty days'
31 notice, before the date the leave is to begin, of the employee's
32 intention to take leave for a family member's serious health
33 condition or the employee's serious health condition, except that if
34 the date of the treatment requires leave to begin in less than

1 thirty days, the employee must provide such notice as is
2 practicable.

3

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

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

14

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

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

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

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

30 (b) The probable duration of the condition;

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

33 (d)(i) For purposes of leave for a family member's serious
34 health condition, a statement that the employee is needed to care

1 for the family member and an estimate of the amount of time that
2 such employee is needed to care for the family member; and

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

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

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

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

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

31 (4) If the second opinion described in subsection (3) of this
32 section differs from the opinion in the original certification
33 provided under subsection (1) of this section, the employer may
34 require, at the expense of the employer, that the employee obtain

1 the opinion of a third health care provider designated or approved
2 jointly by the employer and the employee concerning the information
3 certified under subsection (2) of this section. The opinion of the
4 third health care provider concerning the information certified
5 under subsection (2) of this section is considered to be final and
6 is binding on the employer and the employee.

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

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

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

22 (8) The commissioner may direct the family leave care recipient
23 to submit to examination by a health care provider designated by him
24 or her in any case in which the family leave benefits are contested.
25 The department shall pay for the cost of such examination and pay
26 the benefits for a reasonable period to allow for the examination to
27 occur and the medical results to be delivered.

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

34

1 (10) If benefits required to be paid under this chapter have
2 been paid to an employee, further payments for the same family leave
3 are not barred solely because of failure to give notice or to file
4 proof for the period or periods for which such benefits have been
5 paid, so long as notice and proof are given for the current period.
6

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

10 (2) The department shall establish procedures and forms for
11 filing applications for benefits under this chapter. The department
12 shall notify the employer within five business days of an
13 application being filed.

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

18 (4) Information contained in the files and records pertaining to
19 an employee under this chapter are confidential and not open to
20 public inspection, other than to public employees in the performance
21 of their official duties. However, the employee or an authorized
22 representative of an employee may review the records or receive
23 specific information from the records on the presentation of the
24 signed authorization of the employee. An employer or the employer's
25 duly authorized representative may review the records of an employee
26 employed by the employer in connection with a pending application.
27 At the department's discretion, other persons may review records
28 when such persons are rendering assistance to the department at any
29 stage of the proceedings on any matter pertaining to the
30 administration of this chapter.

31 (5) The department shall develop and implement an outreach
32 program to ensure that employees who may be qualified to receive
33 family leave benefits under this chapter are made aware of these
34 benefits. Outreach information shall explain, in an easy to

1 understand format, eligibility requirements, the application
2 process, weekly benefit amounts, maximum benefits payable, notice
3 and certification requirements, reinstatement and nondiscrimination
4 rights, confidentiality, and the relationship between employment
5 protection, leave from employment, and wage replacement benefits
6 under this chapter and other laws, collective bargaining agreements,
7 and employer policies. Outreach information shall be available in
8 English and other primary languages as defined in RCW 74.04.025.

9

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

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

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

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

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

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

27 (6) Provides a document authorizing the family member's or
28 employee's health care provider, as applicable, to disclose the
29 family member's or employee's health care information in the form of
30 the certification required under RCW 49.78.270 (as recodified by
31 this act).

32

33 NEW SECTION. **Sec. 17.** If an employee does not have a spouse,
34 the employee may designate one person for whom the employee will

1 care for if the designated person has a serious health condition. An
2 employer may establish a process for an employee to make such a
3 designation within thirty days of the employee's date of hire.
4 Thereafter, the employer must permit the employee to make or change
5 such a designation, as applicable, on an annual basis. If an
6 employee's employer establishes such a process, the employee must
7 make such a designation using the employer's process. If an
8 employee's employer does not establish such a process, the employee
9 may make such a designation when applying for benefits.

10

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

17

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

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

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

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

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

33 ~~((c))~~ (3) Nothing in this section entitles any restored
34 employee to:

1 ~~((i))~~ (a) The accrual of any seniority or employment benefits
2 during any period of leave; or

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

6 ~~((d))~~ (4) As a condition of restoration under ~~((a) of this))~~
7 subsection (1) of this section for an employee who has taken leave
8 for the employee's serious health condition, the employer may have a
9 uniformly applied practice or policy that requires each such
10 employee to receive certification from the health care provider of
11 the employee that the employee is able to resume work, except that
12 nothing in this subsection ~~((1)(d))~~ supersedes a valid local law
13 or a collective bargaining agreement that governs the return to work
14 of such employees.

15 ~~((e))~~ (5) Nothing in this ~~((subsection (1))~~ section prohibits
16 an employer from requiring an employee on leave to report
17 periodically to the employer on the status and intention of the
18 employee to return to work.

19 ~~((2) An employer may deny restoration under subsection (1) of
20 this section to any salaried employee who is among the highest paid
21 ten percent of the employees employed by the employer within
22 seventy-five miles of the facility at which the employee is employed
23 if:~~

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

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

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

31

32 NEW SECTION. Sec. 20. (1) If family leave benefits are paid
33 erroneously or as a result of willful misrepresentation, or if an
34 application or weekly claim for family leave benefits is rejected

1 after benefits are paid, RCW 50.20.070 applies, except that appeals
2 are governed by section 22 of this act, penalties are paid into the
3 family and medical leave enforcement account, and the department
4 shall seek repayment of benefits from the recipient. The department
5 shall issue an overpayment assessment setting forth the reasons for,
6 and the amount of, the overpayment.

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

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

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

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

30
31 NEW SECTION. **Sec. 21.** (1) In the form and at the times
32 specified in this chapter and by the commissioner, an employer shall
33 make reports, furnish information, and collect and remit premiums as
34 required by this chapter to the department. If the employer is a

1 temporary help company that provides employees on a temporary basis
2 to its customers, the temporary help company is considered the
3 employer for purposes of this section. However, if the temporary
4 help company fails to remit the required premiums, the customer to
5 whom the employees were provided is liable for paying the premiums.

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

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

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

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

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

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

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

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

3

4 NEW SECTION. **Sec. 22.** (1) Except as provided under section
5 23(1) of this act, a person may file a notice of appeal from any
6 determination or redetermination made by the department with the
7 commissioner, by mail or personally, within thirty days after the
8 date on which a copy of the department's decision was served on the
9 person. Upon receipt of the notice of appeal, the commissioner shall
10 request the assignment of an administrative law judge in accordance
11 with chapter 34.05 RCW to conduct a hearing and issue a proposed
12 decision and order. The hearing shall be conducted in accordance
13 with chapter 34.05 RCW.

14 (2) The administrative law judge's proposed decision and order
15 shall be final and not subject to further appeal unless, within
16 thirty days after the decision is served on the interested parties,
17 a party files a petition for judicial review as provided in chapter
18 34.05 RCW.

19 (3) If, upon judicial review, the final decision of the
20 department is reversed or modified, the court in its discretion may
21 award the prevailing party, other than the department, reasonable
22 attorneys' fees and costs. Attorneys' fees and costs owed by the
23 department, if any, are payable from the family and medical leave
24 enforcement account.

25

26 NEW SECTION. **Sec. 23.** (1) A determination of amount of
27 benefits potentially payable under this chapter is not a basis for
28 appeal. However, the determination is subject to request by the
29 employee on family leave for redetermination by the commissioner at
30 any time within one year from the date of delivery or mailing of
31 such determination, or any redetermination thereof. A
32 redetermination shall be furnished to the employee in writing and
33 provide the basis for appeal.

34

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

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

12 (4) A redetermination may be made at any time: (a) To conform to
13 a final court decision applicable to either an initial determination
14 or a determination of denial or allowance of benefits; (b) in the
15 event of a back pay award or settlement affecting the allowance of
16 benefits; or (c) in the case of misrepresentation or willful failure
17 to report a material fact. Written notice of any such
18 redetermination shall be promptly given by mail or delivered to such
19 interested parties as were notified of the initial determination or
20 determination of denial or allowance of benefits and any new
21 interested party or parties who, pursuant to such rule as the
22 commissioner may adopt, would be an interested party.

23

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

28 (2) In any week in which an employee is receiving benefits under
29 chapter 7.68 RCW, Title 50 or 51 RCW, or other applicable federal or
30 state crime victims' compensation, unemployment compensation,
31 industrial insurance, or disability insurance laws, the employee is
32 disqualified from receiving family leave benefits under this
33 chapter.

34

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

3 In accordance with the federal family and medical leave act,
4 during any period of family leave taken under ((RCW 49.78.220)) this
5 chapter, ((if the employee is not eligible for any employer
6 contribution to medical or dental benefits under an applicable
7 collective bargaining agreement or employer policy during any period
8 of leave, an employer shall allow the employee to continue, at the
9 employee's expense, medical or dental insurance coverage, including
10 any spouse and dependent coverage, in accordance with state or
11 federal law. The premium to be paid by the employee shall not exceed
12 one hundred two percent of the applicable premium for the leave
13 period)) the employer shall maintain any existing health benefits of
14 the employee in force for the duration of such leave as if the
15 employee had continued to work from the date he or she commenced
16 family leave until the date he or she returns to employment.

17
18 NEW SECTION. **Sec. 26.** Whenever an employee of a covered
19 employer who is qualified for benefits under this chapter is absent
20 from work to provide family leave for more than seven consecutive
21 days, the employer shall provide the employee with a written
22 statement of the employee's rights under this chapter in a form
23 prescribed by the commissioner. The statement must be provided to
24 the employee within five business days after the employee's seventh
25 consecutive day of absence due to family leave or within five
26 business days after the employer has received notice that the
27 employee's absence is due to family leave, whichever is later.

28
29 **Sec. 27.** RCW 49.78.300 and 2006 c 59 s 11 are each amended to
30 read as follows:

31 (1) It is unlawful for any employer to:
32 (a) Interfere with, restrain, or deny the exercise of, or the
33 attempt to exercise, any valid right provided under this chapter; or
34

1 (b) Discharge or in any other manner discriminate against any
2 (~~individual~~) employee for opposing any practice made unlawful by
3 this chapter.

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

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

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

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

14

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

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

27

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

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

32 (a) For damages equal to:

33 (i) The amount of:

34

1 (A) Any wages, salary, employment benefits, or other
2 compensation denied or lost to such employee by reason of the
3 violation; or

4 (B) In a case in which wages, salary, employment benefits, or
5 other compensation have not been denied or lost to the employee, any
6 actual monetary losses sustained by the employee as a direct result
7 of the violation, such as the cost of providing care, up to a sum
8 equal to twelve weeks of wages or salary for the employee;

9 (ii) The interest on the amount described in (a)(i) of this
10 subsection calculated at the prevailing rate; and

11 (iii) An additional amount as liquidated damages equal to the
12 sum of the amount described in (a)(i) of this subsection and the
13 interest described in (a)(ii) of this subsection, except that if an
14 employer who has violated RCW 49.78.300 (as recodified by this act)
15 proves to the satisfaction of the court that the act or omission
16 which violated RCW 49.78.300 (as recodified by this act) was in good
17 faith and that the employer had reasonable grounds for believing
18 that the act or omission was not a violation of RCW 49.78.300, the
19 court may, in the discretion of the court, reduce the amount of the
20 liability to the amount and interest determined under (a)(i) and
21 (ii) of this subsection, respectively; and

22 (b) For such equitable relief as may be appropriate, including
23 employment, reinstatement, and promotion.

24 (2) An action to recover the damages or equitable relief
25 prescribed in subsection (1) of this section may be maintained
26 against any employer in any court of competent jurisdiction by any
27 one or more employees for and on behalf of:

28 (a) The employees; or

29 (b) The employees and other employees similarly situated.

30 (3) The court in such an action shall, in addition to any
31 judgment awarded to the plaintiff, allow reasonable attorneys' fees,
32 reasonable expert witness fees, and other costs of the action to be
33 paid by the defendant.

34

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

3 Each employer shall post and keep posted, in conspicuous places
4 on the premises of the employer where notices to employees and
5 applicants for employment are customarily posted, a notice, to be
6 prepared or approved by the (~~director~~) commissioner, setting forth
7 excerpts from, or summaries of, the pertinent provisions of this
8 chapter and information pertaining to the filing of a charge. Any
9 employer that willfully violates this section may be subject to a
10 civil penalty of not more than one hundred dollars for each separate
11 offense. Any penalties collected by the department under (~~the~~
12 ~~{this}~~) this section shall be deposited into the family and medical
13 leave enforcement account.

14

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

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

26

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

29 (1) Nothing in this chapter shall be construed(~~(+ (1))~~) to
30 modify or affect any state or local law prohibiting discrimination
31 on the basis of race, religion, color, national origin, sex, age, or
32 disability(~~(+ or (2) to supersede any provision of any local law~~
33 ~~that provides greater family or medical leave rights than the rights~~
34 ~~established under this chapter)~~)).

1 (2) The state of Washington fully occupies and preempts the
2 entire field of the governmental regulation of mandatory paid family
3 leave for all private employers covered by the provisions of this
4 act. Nothing in this chapter prevents a private employer from
5 providing greater family or medical leave benefits than those
6 established under this chapter. Cities, towns, and counties or other
7 political subdivisions may enact only those laws and ordinances
8 relating to paid family leave for private employers that are
9 specifically authorized by state law and are consistent with this
10 chapter. Local laws and ordinances regarding paid family leave for
11 private employers, in existence on the effective date of this
12 section that are inconsistent with this chapter are preempted and
13 repealed, regardless of the nature of the code, charter, or home
14 rule status of such a city, town, county, or political subdivision.

15

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

18 Nothing in this chapter shall be construed to discourage private
19 employers from adopting or retaining leave policies more generous
20 than any policies that comply with the requirements under this
21 chapter.

22

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

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

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

33

34

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

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

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

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

12 (d) The employee is permitted to change a previously elected
13 withholding status.

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

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

20

21 NEW SECTION. **Sec. 36.** This chapter does not create a
22 continuing entitlement or contractual right. The legislature
23 reserves the right to amend or repeal all or part of this chapter at
24 any time, and a benefit or other right granted under this chapter
25 exists subject to the legislature's power to amend or repeal this
26 chapter. There is no vested private right of any kind against such
27 amendment or repeal.

28

29 NEW SECTION. **Sec. 37.** The family leave insurance account is
30 created in the custody of the state treasurer. All receipts from the
31 employee premiums imposed under this chapter must be deposited in
32 the account. Expenditures from the account may be used only for the
33 purposes of the family leave program. Only the commissioner may
34 authorize expenditures from the account. The account is subject to

1 the allotment procedures under chapter 43.88 RCW. An appropriation
2 is required for administrative expenses, but not for benefit
3 payments.

4

5 NEW SECTION. **Sec. 38.** Whenever, in the judgment of the state
6 investment board, there shall be in the family leave insurance
7 account funds in excess of that amount deemed by the state
8 investment board to be sufficient to meet the current expenditures
9 properly payable therefrom, the state investment board shall have
10 full power to invest, reinvest, manage, contract, or sell or
11 exchange investments acquired with such excess funds in the manner
12 prescribed by RCW 43.84.150, and not otherwise.

13

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

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

19 (2)(a) An experience rating account shall be established and
20 maintained for each employer, except employers as described in RCW
21 50.44.010, 50.44.030, and 50.50.030 who have properly elected to
22 make payments in lieu of contributions, taxable local government
23 employers as described in RCW 50.44.035, and those employers who are
24 required to make payments in lieu of contributions, based on
25 existing records of the employment security department.

26 (b) Benefits paid to an eligible individual shall be charged to
27 the experience rating accounts of each of such individual's
28 employers during the individual's base year in the same ratio that
29 the wages paid by each employer to the individual during the base
30 year bear to the wages paid by all employers to that individual
31 during that base year, except as otherwise provided in this section.

32 (c) When the eligible individual's separating employer is a
33 covered contribution paying base year employer, benefits paid to the
34 eligible individual shall be charged to the experience rating

1 account of only the individual's separating employer if the
2 individual qualifies for benefits under:

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

6 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
7 (x).

8 (3) The legislature finds that certain benefit payments, in
9 whole or in part, should not be charged to the experience rating
10 accounts of employers except those employers described in RCW
11 50.44.010, 50.44.030, and 50.50.030 who have properly elected to
12 make payments in lieu of contributions, taxable local government
13 employers described in RCW 50.44.035, and those employers who are
14 required to make payments in lieu of contributions, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

33 (4)(a) A contribution paying base year employer, except
34 employers as provided in subsection (6) of this section, not

1 otherwise eligible for relief of charges for benefits under this
2 section, may receive such relief if the benefit charges result from
3 payment to an individual who:

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

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

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

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

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

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

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

8 (b) The employer requesting relief of charges under this
9 subsection must request relief in writing within thirty days
10 following mailing to the last known address of the notification of
11 the valid initial determination of such claim, stating the date and
12 reason for the separation or the circumstances of continued
13 employment. The commissioner, upon investigation of the request,
14 shall determine whether relief should be granted.

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

26 (6) An employer's experience rating account may not be relieved
27 of charges for a benefit payment and an employer who reimburses the
28 trust fund for benefit payments may not be credited for a benefit
29 payment if a benefit payment was made because the employer or
30 employer's agent failed to respond timely or adequately to a written
31 request of the department for information relating to the claim or
32 claims without establishing good cause for the failure and the
33 employer or employer's agent has a pattern of such failures. The
34

1 commissioner has the authority to determine whether the employer has
2 good cause under this subsection.

3 (a) For the purposes of this subsection, "adequately" means
4 providing accurate information of sufficient quantity and quality
5 that would allow a reasonable person to determine eligibility for
6 benefits.

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

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

14 (B) Twenty percent of the total current claims against the
15 employer.

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

19

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

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

24

25 NEW SECTION. **Sec. 41.** RCW 49.78.010, 49.78.020, 49.78.220,
26 49.78.230, 49.78.250, 49.78.260, 49.78.270, 49.78.280, 49.78.290,
27 49.78.300, 49.78.310, 49.78.320, 49.78.330, 49.78.340, 49.78.350,
28 49.78.360, 49.78.370, 49.78.380, 49.78.390, 49.78.400, 49.78.410,
29 49.78.901, and 49.78.904 are each recodified as a new chapter in
30 Title 50 RCW.

31

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

34

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

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

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

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

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

9 (6)RCW 49.86.030 (Eligibility for benefits) and 2013 2nd sp.s. c
10 26 s 1, 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;

11 (7)RCW 49.86.040 (Disqualification from benefits) and 2007 c 357
12 s 6;

13 (8)RCW 49.86.050 (Duration of benefits—Payment of benefits) and
14 2007 c 357 s 7;

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

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

17 (11)RCW 49.86.080 (Erroneous payments—Payments induced by
18 willful misrepresentation—Claim rejected after payments) and 2007 c
19 357 s 10;

20 (12)RCW 49.86.090 (Leave and employment protection) and 2007 c
21 357 s 11;

22 (13)RCW 49.86.100 (Employment by same employer) and 2007 c 357 s
23 12;

24 (14)RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;

25 (15)RCW 49.86.120 (Appeals) and 2007 c 357 s 14;

26 (16)RCW 49.86.130 (Prohibited acts—Discrimination—Enforcement)
27 and 2007 c 357 s 15;

28 (17)RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;

29 (18)RCW 49.86.150 (Continuing entitlement or contractual rights—
30 Not created) and 2007 c 357 s 17;

31 (19)RCW 49.86.160 (Rules) and 2007 c 357 s 18;

32 (20)RCW 49.86.170 (Family leave insurance account) and 2009 c 4
33 s 905 & 2007 c 357 s 19;

34

1 (21)RCW 49.86.180 (Family leave insurance account funds—
2 Investment) and 2007 c 357 s 20;

3 (22)RCW 49.86.210 (Reports) and 2013 2nd sp.s. c 26 s 2, 2011
4 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;

5 (23)RCW 49.86.902 (Effective dates—2007 c 357) and 2007 c 357 s
6 30; and

7 (24)RCW 49.86.903 (Construction—Chapter applicable to state
8 registered domestic partnerships—2009 c 521) and 2009 c 521 s 136.

9
10 NEW SECTION. **Sec. 43.** Sections 3, 5 through 10, 15 through 18,
11 20 through 24, 26, and 35 through 38 of this act are each added to
12 chapter 50.--- RCW (the new chapter created in section 41 of this
13 act).

14

15 NEW SECTION. **Sec. 44.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19

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

22 Correct the title.

23

EFFECT: Strikes the underlying bill and provides for
family leave insurance as follows:

- Purposes of leave. Allows benefits for employees on leave for birth of a child or placement of an adopted or foster child, leave made necessary by a family member's or the employee's own serious health condition, and leave because of a military exigency. Allows a person without a spouse to designate a person for whom the employee will provide care. Defines family members, serious health condition, and other terms.
- Eligibility. Establishes eligibility as 26 consecutive weeks in employment, with provisions for persons who work less than a usual workweek and for portability between employers for 90 days. Creates separate provisions for public sector employees: Represented employees may opt-in or out and employers of

nonrepresented employers may opt-in or out. Allows elective coverage by self-employed individuals.

- Benefits - general. Provides benefits of 50 percent of an employee's average weekly wage (capped at 50 percent of the state average weekly wage) and 8 weeks of leave, with phased in increases to 67 percent of the employee's average weekly wage (capped at 67 percent of the state average weekly wage) and 12 weeks of leave in 2023 and thereafter. Provides for benefits to begin January 1, 2020. Allows the Employment Security Department (ESD) to delay benefit increases.
- Premiums. Provides for premiums to be paid by employees and those electing coverage, beginning January 1, 2019. Establishes a maximum amount of wages subject to premiums. Requires ESD to set the premium using sound actuarial principles. Allows for a solvency surcharge.
- Job protection. Provides job protection for all employees.
- Administration. Provides for ESD to administer family leave insurance. Establishes requirements and procedures for applications, health care provider certification, notice of provisions to employees, and outreach. Sets forth procedures for appeals, overpayments, and other administrative matters.
- Preemption. Preempts paid leave provisions by local governments for private employers.
- Other benefit provisions. Disqualifies persons from benefits for absences caused by willful or illegal acts of the employee, and for other reasons. Permits an employer to not allow more than one employee to use the same period of leave to care for the same family member. Provides for intermittent leave and other benefit provisions.
- Other. Grants rule-making authority to ESD. Provides for unemployment insurance charge relief for charges that result from laying off a replacement worker. Requires leave to be concurrent with the federal Family and Medical Leave Act, unless the employer permits otherwise. Merges the family leave insurance provisions into the family leave law, recodifies the family leave law in the unemployment insurance title, and repeals the family leave insurance law.

--- END ---