

SENATE BILL REPORT

SB 5032

As of June 27, 2017

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

Brief Description: Implementing family and medical leave insurance.

Sponsors: Senators Keiser, Pedersen, Rolfes, Conway, Darneille, Hasegawa, Cleveland, Hunt, Chase, Ranker, McCoy, Hobbs, Nelson, Billig, Frockt and Palumbo.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/30/17, 6/28/17.

Brief Summary of Bill

- Provides paid family leave of up to 12 weeks to bond after the birth or placement of a child or to care for a family member with a serious health condition.
- Provides paid medical leave of up to 12 weeks for an employee's serious health condition.
- Limits combined leave to 16 weeks in a year, plus an additional two weeks if there are pregnancy complications, for a possible total of 18 weeks. Requires a seven-day waiting period for leave, except for the birth or placement of a child.
- Provides leave for a military exigency.
- Requires an employee to work 820 hours in the qualifying period to be eligible.
- Specifies a premium of 0.4 percent of wages beginning on January 1, 2019. Premiums assessed to employers and employees vary. An employer may pay the employee's share.
- Bases benefits on an employee's wages and may be paid beginning January 1, 2020.
- Authorizes employers to operate their own equivalent voluntary plans.
- Includes special provisions for small businesses.
- Allows tribes and self-employed individuals to opt-in.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Richard Rodger (786-7461)

Background: Unpaid Family and Medical Leave. *Federal Law.* Federal and state laws grant certain employees the right to unpaid family and medical leave. The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for the birth or placement of an adopted or foster child, or the serious health condition of the employee or the employee's family member. Eligible employees may also take leave because of a qualifying exigency arising out of active military duty or impending active duty status. Generally, the FMLA applies to employees who work for a private employer with 50 or more employees or for a public employer, and meet employment duration requirements.

State Law. The state Family Leave Act (FLA) is very similar to the FMLA but does not include military exigency leave. Under the FLA, a "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves inpatient care at specified facilities, or continuing treatment by a health care provider. A number of types of incapacity qualify as "continuing treatment by a health care provider," including an incapacity lasting more than three consecutive days that involves treatment by a health care provider.

The state Military Family Leave Act allows certain employees to take 15 days of job-protected leave when the employee's spouse is notified of an impending call to active duty or when the spouse is on leave from active duty.

Paid Leave. *I-1433.* Under Initiative 1433, passed by the voters in 2016, employees will be eligible for paid sick leave beginning on January 1, 2018. Paid sick leave accrues at the rate of one hour of leave for every 40 hours worked. Paid sick leave may be used for the employee's or a family member's injury, illness, or health condition, or need for preventative care and other specified situations. Employers must pay employees using paid sick leave at their regular rate of pay or the minimum wage, whichever is greater.

Family Leave Insurance Program. A framework for a state family leave insurance program was enacted in 2007. Under 2013 legislation, benefits are to begin when the Legislature has specifically appropriated funding and enacted an implementation date.

The framework provides for benefits of \$250 per week for up to five weeks for individuals on leave for the birth or the placement of a child for adoption. To receive benefits, an individual must have worked 680 hours during either the first four of the last five calendar quarters or the last four calendar quarters completed (qualifying year). Most employers are covered. An employer not mandatorily covered or a self-employed person may elect coverage. Paid family leave must be taken concurrently with leave under the FMLA or the FLA.

Job protection applies to individuals who have worked at least 12 months for an employer with more than 25 employees and for at least 1250 hours over the previous 12 months with the employer.

Unemployment Insurance Charging. Most employers pay contributions to finance unemployment benefits. An employer's tax rate is experience-rated so that the rate is determined, in part, by the benefits paid to its employees and charged to the employer. An employer may request relief from charging under specified circumstances.

A Health Impact Review of this legislation was requested and is available at the Washington State Board of Health's website,
<http://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2017-02-SB5032.pdf?ver=2017-01-18-123338-570>.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Creates and implements a paid family and medical leave insurance program. The program is funded by premiums paid by employers and employees and administered by the Employment Security Department (ESD).

Purposes of Leave. Paid family leave benefits are provided when an employee is bonding after the birth or placement of a child, under the age of eighteen, because of a family member's serious health condition, or for a military exigency.

Family member means the employee's child, grandchild, grandparent, parent, parent-in-law, sibling, and spouse. Child means a biological, adopted, foster, stepchild, or child to whom the employee stands in *loco parentis* and other specified relationships. A military exigency includes leave such as leave for short notice deployments, military events, urgent childcare and related activities, and post-deployment activities.

Paid medical leave benefits are provided for an employee's own serious health condition. Serious health condition is defined the same as in the FMLA and its regulations.

Eligibility. Employees are eligible for family and medical leave benefits after working for at least 820 hours in employment during the qualifying period. Tribes and self-employed individuals, including independent contractors, may opt-in to the program. Self-employed individuals are eligible for benefits once they have worked 820 hours, after electing coverage, and must pay premiums for a minimum of three years.

To be eligible to receive benefits, an employee must file a claim for benefits, consent to the disclosure of certain information, notify the employer, and meet certain documentation requirements regarding leave for a serious health condition or military exigency.

Duration of Leave. The maximum duration of benefits is twelve times the typical workweek hours during a 52-week period for each of family leave and medical leave. The combined total of family and medical leave is sixteen weeks. An additional two weeks of leave may be used if the employee has a serious health condition with a pregnancy that results in incapacity, for a combined total of eighteen weeks.

No benefits are payable for leave during the first seven-days, except of leave for birth or placement of a child which has no waiting period.

An employer may allow an employee to use accrued vacation, sick, or other paid time off, or receive the benefits under the program.

Amount of Benefit. The benefit amount is a percentage of the individual's average weekly wage (AWW) during the two highest quarters in the qualifying period, calculated as follows:

- if the individual's AWW is 50 percent or less of the state AWW (\$1,082 for 2015), the benefit is 90 percent of the individual's AWW; or
- if the individual's AWW is more than 50 percent of the state AWW, the benefit is 90 percent of the individual's AWW up to 50 percent of the state AWW, and 50 percent of the individual's AWW that is greater than the state AWW.

The maximum weekly benefit amount is \$1,000 and is adjusted annually to 90 percent of the state AWW. The minimum weekly benefit is not less than \$100 per week, except that if the employee's AWW at the time of the leave is less than \$100 per week, the weekly benefit is the employee's full wage.

Premiums. The initial premium rate is set at 0.4 percent of wages beginning on January 1, 2019. The medical leave premium rate is two-thirds of the total premium rate and the family leave premium is one-third of the total premium rate. The premium rate will be reviewed for annual adjustments under a specified formula and for a solvency surcharge if the account balance ratio is at or below a specified level.

Employers may deduct from the employees' wages one hundred percent of the premiums due for the family leave and up to forty-five percent of the premiums due for the medical leave portion. The employer is responsible for fifty-five percent of the medical premium. An employer may elect to pay all of the premiums. The amount of wages subject to a premium assessment is capped at the maximum wages subject to social security tax.

Self-employed individuals who elect coverage pay only the employee share of the premiums. Employers with 50 or fewer employees are exempt from paying the employer share of the premiums.

A conditional waiver for payment of premiums is provided for an employee based out of state who is not expected to be eligible for benefits.

Job protection. An employee returning from leave is entitled to be restored to a same or equivalent job under the same standards regarding employer size and hours of employment as specified in the FMLA.

Voluntary plans. An employer may opt-out of either the state program for family leave or medical leave, or both, by having a voluntary plan that meets specified standards, including:

- the benefits afforded to the employees must be at least equivalent to the benefits the employees are entitled to as part of the state's family and medical leave program, including but not limited to the duration of leave. The employer must offer at least one-half of the length of leave as provided in the act with pay and provide a monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive as part of the state-run program;

- the payroll deductions may not to exceed the deduction for an employee under the state program;
- coverage for employees after working the 820 hours in the qualifying period and at least 340 hours for the current voluntary plan employer; and
- employees' jobs are protected if an employee has worked for at least nine months and 965 hours during the preceding twelve months for the employer.

ESD's fee for reviewing each voluntary plan is set at \$250. ESD must conduct a review of the related administrative expenses incurred during the first three years and report to the Legislature.

Additional provisions are included regarding successor employers, penalties, employee transitions between voluntary plans and the state plan, and termination of plans.

Local governments. A city, code city, town, county, or other political subdivision may not enact a charter, ordinance, regulation, rule, or resolution that create a paid family or medical leave insurance program that alters or amends the program for a private employer; provides for local enforcement of the program; or requires private employers to supplement the duration of leave or the benefits provided under the program. Local governments may provide greater benefits to their employees.

Administration. ESD administers the program and is granted rulemaking authority. The department must conduct an outreach program and address items such as the application process, record-keeping, appeals, and other administrative matters.

Penalties. An employee who knowingly and willfully makes false statements or representations is disqualified for benefits for a period of time and is subject to monetary penalties. The penalties increase for repeated violations. Employers found by ESD to have violated the provisions concerning voluntary plans are subject to a schedule of increasing monetary penalties and the plan may be terminated after repeated violations. Employers who willfully fail to make reports or pay premiums are subject to escalating penalties. Appeal and collection provisions are provided. ESD must enforce the collection of premiums and penalties through conference and conciliation.

Advisory committee. An advisory committee is created, consisting of four members each representing employees and employers, and an ESD representative and the ombuds as ex officio members. The committee may comment on rules, policies, and other specified matters and study issues as the committee determines.

Small business grants. Employers with 150 or fewer employees or employers with 50 or fewer employees who opt to pay all premiums are eligible for grants of: \$3,000 if the employer hires a temporary worker to replace an employee on leave for seven or more days; or up to \$1,000 for reimbursement for significant additional wage-related costs related to an employee's leave.

An employer who receives a grant for the wage-related costs may receive an additional grant of up to \$ 2,000 in certain circumstances. An employer may not receive more than ten grants per year and only one for each employee on leave.

To be eligible for a grant, an employer with 50 or fewer employees must pay all premiums for three years.

Unemployment Benefits Charges Relief. An employer may request relief of unemployment benefits charges that result from paying unemployment benefits to a temporary replacement employee who worked for the employer for 20 weeks or less and who was laid off due to the return of an employee receiving benefits. The amount of the relief from unemployment benefits charges will be transferred to the unemployment trust fund from the family and medical leave insurance account.

Ombuds. The Governor must appoint an ombuds within the ESD to be available to all employers and employees. The ombuds, among other duties, must provide information to employers and employees on family and medical leave, act as an advocate for employers and employees in their dealings in with ESD, and facilitate resolution of complaints. The ombuds may conduct employee surveys.

Collective bargaining agreements. The act does not require reopening negotiations of an existing agreement or to apply any of the rights or responsibilities until the agreement is reopened or renegotiated or expires.

Reports. ESD must submit annual reports to the Legislature beginning in 2020 on the program, including participation, premium rates, fund balances, benefits paid, demographic information on participants, voluntary plan participation, outreach, and small business assistance.

Health benefits. If required by the FMLA, an employer, including employers with a voluntary plan, must maintain existing health benefits of the employee during the employee's leave. If the cost of the benefits are shared, each remains responsible for their share.

Concurrent with FMLA. Unless otherwise expressly permitted by the employer, leave taken under the act must be taken concurrently with any leave taken under the FMLA.

Accounts. Two accounts are created, a general account for the deposit of premiums and an enforcement account for the deposit of any penalties.

Retaliation. Employers are prohibited from interfering with an employee's rights, including a prohibition on discharging an employee for exercising those rights. The potential damages for violations are specified.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on June 27, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Regular Session 2017): PRO: This bill will have a profound positive impact on military families. The policy in the bill will help families deal with issues relating to the urgent call to military or active duty, take care of child care issues, and allow them to spend time with their children before transferring out of the country. We have all faced unexpected life emergencies and this bill will allow people to take adequate time to recover from medical issues and avoid severe financial problems. Paid leave helps improve the health outcomes for newborn children, allowing their parents to bond with the children before returning to work, and be an investment in our future. Unfortunately, only 13 percent of private sector employees have access to this leave and only four percent of low wage workers have access. We can make Washington a healthier and more supportive place to have a family. This is an affordable and predictable solution to provide an important benefit for life's emergencies. As small businesses we want to do the right thing to help our employees, but we can't afford to pay for these benefits alone. Employees should not have to bear the costs themselves. We are pleased with the bipartisan interest in family leave, but it is important to build a program right from the start. We have researched the proper way to create this system and the bill follows that research. Benefits that are too low force low and moderate income workers to go back to work too soon. Fifty percent of mothers in our state are either the primary or co-breadwinners, that means when they go without a paycheck it has a big effect on their families.

CON: Employers are already dealing with the minimum wage increase and the paid sick and safe leave provisions. They would have to pay replacement costs for workers and retrain workers for those employee who are out on leave. We are not opposed to paid family leave, but cannot afford the costs imposed by the bill. We have a severe shortage of workers and must have equal benefits for our employees, but this bill will cost us too much money because of the length of time off given to employees by this bill. Small businesses pay 36 percent more for new regulation than larger businesses. There should be an exemption for businesses with fewer than 20 employees and the leave should be employee paid. The majority of employees work for small businesses and they are closing. Counties already provide very generous sick leave to their employees, but our costs are growing and our revenues are not keeping up with our costs.

OTHER: The State Board of Health has conducted a health impact review of this bill and found that paid family leave will have the potential to improve financial security, improve maternal, child, and family health, and decrease health disparities by income, educational attainment, and race ethnicity. The bill could use a small business exemption. We would like to move forward to try and find a solution. Our employees are like family and I would do anything for them, but if I'm not able to survive as a business they won't have a job in the first place. Added mandates make it hard to keep a business open. King County strongly supports a statewide family leave program.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Amanda Jacobsen, MD; Raymond Miller, citizen; Rhonda Parker, citizen; Sara Reilly, Darby's Cafe and Three Magnets Brewing Company; Edie Lang, citizen; Nicole Booker, citizen; Kaila Tang, citizen; Marilyn Watkins, citizen; Margarita Roman, citizen; Maggie Humphreys, Washington State Director, MomsRising.

CON: Carolyn Logue, Washington Retail Association; Holli Johnson, Washington Food Industry Association; John Suk, Washington Technology Industry Association, Chairman; Dave Parker, Code Fellows/CEO; Gary Smith, Independent Business Association; Josh Weiss, Washington State Association of Counties.

OTHER: Alexandra Montano, State Board of Health/Policy Advisor; Bob Battles, AWB; Tonya Neilson, small business owner; Mike Shaw, King County.

Persons Signed In To Testify But Not Testifying: No one.