

# SENATE BILL REPORT

## SB 5032

---

As of June 30, 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.

### Brief Summary of Bill

- Provides benefits for individuals on leave for a family member's serious health condition, an individual's own serious health condition, a child's birth or placement of a child, or a military exigency.
- Provides up to 26 weeks of leave for birth or placement of a child, for a family member's serious health condition, or for a military exigency, starting October 1, 2019.
- Provides up to 12 weeks of leave for an individual's own serious health condition starting October 1, 2020.
- Establishes benefits, which are capped at \$1,000 per week, based on the individual's wage rather than a flat amount.
- Specifies a premium on employers of 0.255 percent of wages beginning on July 1, 2018, and then 0.51 percent of wages beginning January 1, 2020.
- Allows employers to deduct up to one-half of the premiums from the employee's pay.

---

### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Staff:** Richard Rodger (786-7461)

---

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

**Background:** 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 family and medical leave insurance program (FMLI) is implemented and modified.

Purposes of Leave. Benefits are payable when an individual is unable to work because the individual is on leave for a family member's or the individuals' own serious health condition, in addition to birth or placement of a child. Leave may also be taken for a military exigency.

"Serious health condition" has the same meaning as in the FLA. A "military exigency" is defined by reference to the FMLA and implementing rules. Military exigency leave may be taken by a "family member" as defined for purposes of the FMLI.

Amount of Benefit. The benefit amount is changed from a flat rate to a percentage of the individual's average weekly wage (AWW) during the two highest earning quarters of the individual's qualifying year:

- If the individual's AWW is 50 percent or less of the state average weekly wage (\$1,082 for 2015), the benefit is 90 percent of the individual's AWW.
- 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 benefit amount is \$1,000 and is adjusted annually to 90 percent of the state AWW.

Duration of Benefit. The maximum duration of benefits is 26 weeks for a child's birth or placement, a family member's serious health condition, and military exigency leave. In addition, benefits are payable for 12 weeks for the individual's serious health condition.

The number of weeks of leave apply to an application year, which is the 12 month period beginning with the birth or placement of a child, or the application for benefits for the other types of leave. For serious health conditions, no benefits are payable for a seven day waiting period.

Eligibility. All employers, including public employers, are covered for purposes of benefits. The hours of work to be eligible for benefits is lowered from 680 to 340 hours during the qualifying year. To receive benefits, an individual must:

- file an application for benefits;
- consent to the disclosure of certain information;
- notify the employer;
- provide his or her social security number; and
- meet certain documentation requirements regarding leave for a serious health condition or military exigency.

An individual does not need to be working at the time of application.

Benefits are payable beginning October 1, 2019, except benefits for an individual's serious health condition, which are payable beginning October 1, 2020. Elective coverage is available for independent contractors as well as self-employed persons beginning January 1, 2019. The election becomes effective when the person establishes 340 hours after electing coverage. Provisions are set forth for cancelling elective coverage.

Other Benefit Provisions. The job protection provision is modified to apply to employers with eight or more employees and employees who were employed by that employer for at least six months. An employer must maintain any health plan coverage during any period in which an individual receives benefits. An employer may require an individual receiving benefits to take the leave concurrently with leave under other laws. An employer may not require an individual to exhaust other wage replacement benefits before receiving family and medical leave insurance benefits.

An individual entitled to job protection under another law is entitled to the protections of the most favorable law. The provisions do not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy that provides greater protection or benefits. An employer may enter a collective bargaining agreement or adopt a policy to coordinate existing benefits with leave and wage replacement benefits. Claims are made weekly and an individual may submit weekly claims on an intermittent basis.

Premiums. Premiums are assessed at 0.255 percent of wages paid within the state beginning on July 1, 2018 and are raised to 0.51 percent of wages beginning January 1, 2020. An employer may deduct up to one-half of the premium from employee wages.

Premiums are deposited into the renamed Family and Medical Leave Insurance Account (account). Beginning in 2021, the premium is based on the account balance ratio. The ratio is determined by dividing the balance in the account by total wages. The premium amounts are specified depending on the ratio of an individuals' wages. If the ratio falls below 0.05 percent, employers are charged a solvency surcharge.

Unemployment Compensation Charge Relief. Employers may request relief of unemployment benefit charges that result from paying unemployment benefits to a temporary replacement employee, who worked for the employer for 40 weeks or less, and who was laid off due to the return of an employee who was receiving family and medical leave benefits.

Implementation and Administration. The Employment Security Department (ESD) pays benefits, collects premiums, defines wages by rule for purposes of independent contractors and self-employed individuals, and otherwise administers provisions related to benefits and premiums. The Department of Labor and Industries (L&I) enforces the job protection provisions. Employer record keeping requirements are established.

The ESD must adopt government efficiencies to include, to the extent feasible, combined reporting and payment with a single return of unemployment contributions and FMLI.

Other. The annual reporting requirement to the Legislature is expanded to include demographic information on program participants and other items. Additional outreach

information is specified. Appeal provisions are modified to, among other things, provide that an administrative law judge's proposed decision and order is subject to judicial review, instead of the Director of the ESD's review.

A provision allowing an employer employing spouses to require leave not be taken concurrently is repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**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:** PRO: This bill will have a profound positive impact on military families. The policy in the bill will help families deal with issues relating 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 bond with the children before returning to work, and be an investment in our future. Unfortunately, only 13% of private sector employees have access to this leave and only 4% 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 bill follows that research. Too low of benefits force low and moderate income workers go back to work too soon. Fifty percent of moms 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 do retraining of 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 to 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 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.