

HOUSE BILL REPORT

HB 2614

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to paid family and medical leave.

Brief Description: Concerning paid family and medical leave.

Sponsors: Representatives Robinson, Doglio, Sells, Lekanoff, Tharinger and Ormsby; by request of Employment Security Department.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/20/20, 1/23/20 [DPS];

Appropriations: 2/3/20, 2/8/20 [DPS(LAWS)].

Brief Summary of Substitute Bill

- Exempts casual labor from the types of employment covered by Paid Family and Medical Leave.
- Provides for a private right of action, liquidated damages payable directly to employees, and specifies other enforcement provisions.
- Makes changes regarding waiting periods, conditional waivers, supplementation of benefits, and other matters.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Lily Smith (786-7175).

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:

In 2017 a Paid Family and Medical Leave (PFML) program was enacted to provide partial wage replacement to employees on leave for specified family and medical reasons. Employees are eligible for PFML benefits after working at least 820 hours in a qualifying period. Premium collection began January 1, 2019, and benefits are payable beginning January 1, 2020. The Employment Security Department (Department) administers the program.

The PFML program includes provisions regarding premiums, coverage, the use, duration, and amount of benefits, and an employer option of a voluntary plan, among other provisions. The following are included in the program provisions:

- a required waiting period before benefits are payable, except for the birth or placement of a child;
- a process for requesting a conditional waiver from both employer and employee premiums if the employee works outside the state and is not expected to work 820 hours in the state in the qualifying period;
- an employer's ability to offer supplemental benefit payments, such as vacation, sick, or other paid time off, to an employee on leave;
- a requirement that the Department must withhold child support from a benefit payment if it determines the employee owes child support;
- employee disqualification from PFML benefits if they are eligible for workers' compensation or unemployment insurance wage benefits;
- an employer's ability to opt out of the state plan by having a voluntary plan that meets specified standards; and
- processes and parameters for enforcement of the PFML program by the Department, including investigation of complaints, and potential civil penalties and damages.

Summary of Substitute Bill:

Time Periods.

The time periods associated with PFML benefits are modified as follows:

- the beginning of the waiting period is specified, and that paid time off may be taken during that period;
- military exigency leave is exempted from the waiting requirement; and
- the limitation that successive related periods of PFML are considered one period only when separated by less than four months is removed.

Conditional Waivers.

The requirements for a conditional waiver of PFML premiums are modified as follows:

- an employee is required to primarily perform work, rather than be physically based, outside the state;
- the qualifying period for the limit on expected in-state employment is specified to be within a period of four consecutive completed quarters;
- signatures are required to attest to the specific conditions of the waiver; and

- a conditional waiver is specified to expire if any of the conditions of the waiver are not met.

Supplemental Benefit Payments.

Supplemental benefit payments are specified to not reduce a PFML benefit amount.

Child Support Obligations.

Child support obligations that would lead to a PFML benefit deduction are specified.

PFML benefits are added to the types of payments from the Department that trigger certain obligations for child support related payroll deductions.

Interaction With Other Benefits.

Other wage replacement benefits that disqualify an employee from receipt of PFML benefits are specified, as well as that actual receipt of those benefits, not eligibility, creates disqualification.

Voluntary Plan Approvals.

Employer obligations for remittance of premiums in instances of termination or withdrawal of a voluntary plan are clarified.

Enforcement.

The following changes are made to enforcement of the PFML program:

- the Department's investigative authority is limited to violations within the previous three years from the date of a complaint;
- more specificity is provided regarding the applicable process when damages are due;
- a private right of action is provided as an alternative to administrative enforcement by the Department;
- powers associated with the Department's quasi-judicial duties are provided, including the power to administer oaths, take depositions, and issue subpoenas; and
- any party is allowed to file an appeal.

Definitions.

The following changes are made to definitions within the PFML program:

- a definition for "casual labor" is added, and casual labor is exempted from the definition of employment;
- a child's spouse is included in the definition of "child;"
- the definition of "typical work week hours" is modified;
- a definition for "paid time off" is added; and
- a definition for "supplemental benefit payments" is added.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes or additions:

- military exigency leave is exempted from the waiting week requirement for benefits;
- various references to "penalties" are replaced with "liquidated damages;"
- damages for willful violations are directed to be paid directly to the employee instead of to the Department; and

- a limited emergency clause is added to make the definitions section effective immediately.

Appropriation: None.

Fiscal Note: Requested on January 23, 2020.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to definitions, which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill represents the latest in technical corrections to the new PFML program, as a result of review by the workgroup. These changes are to ensure that the intent of the original bill is intact. The changes are agreed to by everyone, including the advisory committee, and the process to reach agreement was well-worked.

(Opposed) None.

Persons Testifying: Representative Robinson, prime sponsor; Nick Streuli, Employment Security Department; Joe Kendo, Washington State Labor Council; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Schmick, Steele, Sutherland and Ybarra.

Staff: David Pringle (786-7310).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to definitions, which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) After sitting on the advisory committee, representatives of the United Food and Commercial Workers believe this bill reflects the results of an effective process. This bill makes technical clarifications to help the program become successful.

(Opposed) None.

Persons Testifying: Nick Streuli, Employment Security Department; Samantha Grad, United Food and Commercial Workers 21 and Washington Paid Family Medical Leave Advisory Committee; and Maggie Humphreys, MomsRising and Washington Paid Family Medical Leave Advisory Committee.

Persons Signed In To Testify But Not Testifying: None.