

SENATE BILL REPORT

SHB 1399

As Reported by Senate Committee On:
Labor & Commerce, March 18, 2019

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

Brief Description: Concerning paid family and medical leave.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Robinson, Doglio, Sells, Hudgins, Ormsby, Springer, Gregerson, Frame, Appleton, Bergquist, Riccelli, Tharinger, Stanford, Slatter, Goodman, Reeves, Macri and Ortiz-Self; by request of Employment Security Department).

Brief History: Passed House: 3/01/19, 71-23.

Committee Activity: Labor & Commerce: 3/14/19, 3/18/19 [DP, w/oRec].

Brief Summary of Bill

- Reorganizes the Paid Family and Medical Leave statutes.
- Makes revisions to definitions, voluntary plans, waiting periods, and other matters.
- Authorizes employer to waive several statutory provisions and to offer supplemental benefits.
- Adds provisions concerning privacy and access to confidential records.
- Broadens the employee's appeal rights to cover any adverse decision in a voluntary plan.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Walsh.

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: In 2017, the Legislature passed a comprehensive program to provide Paid Family and Medical Leave (PFML) to all qualifying employees working in the state. An employee must work at least 820 hours in the qualifying period to be eligible for the benefits. Premiums to support the program began on January 1, 2019, and qualifying employees will be eligible for benefits beginning January 1, 2020. The Department of Employment Security (ESD) is the agency designated to administer the PFML program.

Voluntary Plans. An employer may opt out of the state plan for either family leave or medical leave or both by having a voluntary plan that meets specified standards. Under a voluntary plan, to be eligible for benefits an employee must meet the 820 hours requirement and also have worked at least 340 hours for the voluntary plan employer. ESD must adopt rules to allow benefits or prevent duplication of benefits to employees covered by one or more voluntary plans or the state plan. An employee covered by a voluntary plan at the commencement of a period of leave may not receive benefits from the state plan. An employee may appeal a voluntary plan employer's denial of liability under a claim.

Benefits. A 7-day waiting period is required before benefits are payable, except for the birth or placement of a child. An employee must provide an employer at least 30-days notice for foreseeable leave. An employer may supplement an employee's PFML benefits. However, with respect to other accrued time off, an employer is limited to allowing an employee to use other paid time off or receive PFML benefits.

An employee is not entitled to benefits for any day in which a care recipient works part of the day during substantially similar hours as those of the employer from whom benefits are claimed. ESD must withhold child support from a benefit payment if the employee volunteers that they owe child support, and the ESD may verify delinquent child support.

Definitions. The PFML program gives certain employees job protection, which must include equivalent employment benefits. The definition of "benefits" excludes benefits provided by an employer's practice or written policy. Wages, for purposes of benefits and premiums, is defined by reference to unemployment insurance provisions, with some exceptions.

Disclosure and Privacy. As a condition to receiving benefits, employees must consent to the disclosure of information deemed private under state law. Initial disclosure of the information to another state agency is solely for purposes of administering the PFML program. Further disclosure is subject to provisions in unemployment insurance statutes.

Other. Employers may request 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. A PFML ombuds is a resource for employees and employers.

Summary of Bill: Recodification. The entire PFML law is recodified into new chapters of the code to make the provisions easier to locate.

Definitions. The exclusion of benefits provided by an employer's practice or written policy is removed. Wages is defined for the PFML program, without referencing unemployment insurance statutes. An employee may elect to have wages calculated on the basis of

remuneration payable. "Remuneration" is defined to include all compensation for personal services, previously accrued compensation, and negotiated settlements related to termination or employment agreements. Remuneration does not include tips, supplemental benefits paid by an employer while an employee is collecting PFML benefits, or payments to members of the Armed Forces for duties not exceeding 72 hours.

Benefits. The waiting period is seven calendar days, instead of calendar days of leave. An employer may offer supplemental benefit payments, such as vacation, sick, or other paid time off, to an employee on leave. The employee may chose whether to receive these payments.

To prevent duplication of benefits for employees who are simultaneously covered by a voluntary plan and the state plan, employees must file a claim under the plan for which they have the most hours in the qualifying period. ESD may verify all child support obligations, not limited to delinquent obligations or dependent on the employee's disclosure.

Individuals cannot work and receive PFML benefits for the same period of time.

Garnishments and Liens. A new provision exempts PFML benefits from garnishments or liens, except for child support. Any agreements to assign or encumber PFML benefits are void. These provisions may not be waived.

Authorizing Waivers by Employers. Employers may waive the following statutory provisions to allow employees to receive benefits:

- without providing at least 30 days' notice, when the leave was foreseeable;
- without providing notice as soon as practicable for leave starting in less than 30 days;
- without the employer's attestation, on the initial application, that proper notice was provided; and
- under an employer's voluntary plan without meeting the 340 hours of employment requirement.

Appeal. An employee may appeal any adverse decision by an employer, not limited to a denial of liability.

Privacy and Confidentiality. Individuals, employers, and third parties are able to access confidential information held by ESD under specified circumstances. The ESD is authorized to enter data-sharing agreements with certain other specified state and local agencies.

The disclosure of otherwise confidential information to staff and members of the Legislature is permitted for official purposes, so long as ESD receives a signed release from all parties that evidences consent to such disclosure.

The ESD must submit information to the Internal Revenue Service for the purpose of administering income tax withholdings and reporting.

All private persons, government agencies, and organizations authorized to receive information from ESD have an affirmative obligation to:

- take all reasonable actions necessary to prevent the disclosure of confidential information;

- notify ESD if such disclosure occurs; and
- take all reasonably available actions to rectify the disclosure.

The unauthorized release of information is accompanied by a civil penalty of up to \$20,000. The penalty amount is adjusted annually for inflation.

Interested parties may receive otherwise confidential documents from ESD or an appeal tribunal if the requested documents are material to the appeal proceeding. Confidential information may be subpoenaed from ESD if a written finding from a presiding officer indicates that the need for the confidential information outweighs the privacy risk.

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 help us implement the paid family and medical leave act. It is agreed upon by all the stakeholders. The bill is identical to SSB 5449. Employment Security will address the suggested technical correction in rule.

OTHER: The bill needs a technical correction to address which plan, an employer voluntary plan or the state plan, will pay the benefits if an employee worked under the two different plans.

Persons Testifying: PRO: Representative June Robinson, Prime Sponsor; Nick Streuli, Legislative Director, Employment Security Department.

OTHER: Shannon Lawless, Ryan, Swanson & Cleveland PLLC.

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