

HOUSE BILL REPORT

HB 1087

As Passed House:

February 3, 2021

Title: An act relating to clarifying the continuity of employee family and medical leave rights.

Brief Description: Clarifying the continuity of employee family and medical leave rights.

Sponsors: Representatives Berry, Wicks, Simmons, Kloba, Hackney, Santos, Macri and Sullivan.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/20/21, 1/27/21 [DP].

Floor Activity:

Passed House: 2/3/21, 96-0.

Brief Summary of Bill

- Specifies that the Family Leave Act as it existed prior to January 1, 2020, applies to valid claims based on conduct before that date and the Paid Family and Medical Leave Act applies to claims after that date.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 7 members: Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske, Harris and Ortiz-Self.

Staff: Lily Smith (786-7175).

Background:

Prior to 2020, the Family Leave Act (FLA) entitled eligible employees to take up to 12

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weeks of unpaid leave in a 12-month period, for specified reasons. The FLA also contained employment protection provisions that entitled an employee returning from leave to be restored to their same or equivalent position. Employers were prohibited from interfering with, or discriminating against, employees exercising their rights under FLA. Enforcement provisions in the FLA included a private right of action for employees.

In 2017 the Paid Family and Medical Leave (PFML) program was enacted through the passage of Substitute Senate Bill 5975. Substitute Senate Bill 5975 used a delayed effective date to repeal the FLA on December 31, 2019, the day prior to PFML benefits becoming available on January 1, 2020. The PFML program as enacted contained employment protection, noninterference and nondiscrimination provisions equivalent to the those in the FLA. Substitute House Bill 2614, enacted in 2020, added a private right of action to the PFML program.

Summary of Bill:

The provisions of the FLA as it existed prior to January 1, 2020, apply to employee and employer conduct occurring on or before December 31, 2019. A cause of action based on that conduct remains available within its applicable statute of limitations.

The provisions of the PFML program apply to conduct occurring on or after January 1, 2020.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Workers in Washington have had the right to take off work for various reasons and return to their jobs afterwards for over 30 years, and individuals have been allowed to enforce those rights. Paid Family and Medical Leave improved the existing law, but the bill that created PFML created an unintended gap in protections. As a result, employers now have an argument that is resulting in employees with claims before 2020 having no remedy. In one instance an employee was cleared to return from approved medical leave but the employer refused to reinstate them, and their case was dismissed due to this issue. The bill is a small but important fix that would restore employee rights, protect those whose rights were violated, and provide continuity. It ensures workers get the opportunity to make their case and let the legal process play out as the legislature intended. No one intended to take rights away with the passage of PFML.

(Opposed) None.

Persons Testifying: Representative Berry, prime sponsor; Katherine Chamberlain, Washington Employment Lawyers Association; David Sharpe; and Marilyn Watkins, Economic Opportunity Institute.

Persons Signed In To Testify But Not Testifying: None.