

HOUSE BILL REPORT

2SSB 5649

As Passed House - Amended:

March 3, 2022

Title: An act relating to modifying the Washington state paid family and medical leave act.

Brief Description: Modifying the Washington state paid family and medical leave act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Robinson, Conway, Lovick, Randall and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/18/22, 2/22/22 [DPA];

Appropriations: 2/25/22, 2/28/22 [DPA(APP w/o LAWS)].

Floor Activity:

Passed House: 3/3/22, 96-2.

Brief Summary of Second Substitute Bill (As Amended by House)

- Allows the use of family leave under Paid Family and Medical Leave (PFML) after the death of certain family members.
- Defaults the type of leave taken after giving birth to be medical leave, unless requested otherwise, without certification needed.
- Expires the collective bargaining agreement exception.
- Requires the Employment Security Department (ESD) to publish a list of employers with approved voluntary plans.
- Creates the Office of Actuarial Services within the ESD and requires:
(1) short- and long-term actuarial assessments on the financial condition of the PFML program; (2) reports to the PFML Advisory Committee and to the Legislature; (3) through the Office of Financial Management (OFM), a separately contracted actuarial evaluation and report to the

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

Legislature; and (4) assistance from the State Actuary as requested by the ESD or OFM.

- Creates a legislative task force on PFML program premiums and requires a Joint Legislative Audit and Review Committee report.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. 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).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Labor & Workplace Standards. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Staff: Dawn Eychaner (786-7135).

Background:

Paid Family and Medical Leave Overview.

The Paid Family and Medical Leave (PFML) program provides partial wage replacement to employees on leave for specified family and medical reasons. The Employment Security Department (ESD) administers the PFML program.

Qualified employees are eligible for the following maximum leave amounts per calendar year:

- up to 12 weeks of paid family or medical leave;
- up to 16 weeks of leave when family and medical leave are used in combination; and
- an additional two weeks of leave due to pregnancy complications.

Available Leave.

Paid family leave benefits are provided when an employee is bonding after the birth or

placement of a child under the age of 18, because of a family member's serious health condition, or for a military exigency.

Paid medical leave benefits are provided for an employee's own serious health condition which includes, among other circumstances, any period of incapacity due to pregnancy or for prenatal care.

When applying for leave based on a serious health condition, pregnancy, or birth of a child, the ESD requires certification of the condition, with information provided by the employee and the health care provider.

Collective Bargaining Agreements.

The PFML program provides that parties to a collective bargaining agreement (CBA) in existence on October 19, 2017:

- are exempted from the program unless and until the existing CBA is reopened, renegotiated by the parties, or expires; and
- are not required to reopen negotiations.

Confidential Records.

With some defined exceptions, the ESD must keep information regarding individuals and employers under the PFML program private and confidential. The ESD does not publicly list employers that have approved voluntary plans under the PFML program.

Joint Legislative Audit and Review Committee.

The Joint Legislative Audit and Review Committee (JLARC) is composed of an equal number of House of Representatives and Senate members, Democrats and Republicans. The JLARC nonpartisan staff conduct performance audits, program evaluations, special studies, and sunset reviews.

Summary of Amended Bill:

Available Leave.

Paid family leave benefits are provided during the seven calendar days following the death of the family member for whom the employee would have qualified for medical leave for the birth of their child; or would have qualified for family leave to bond with their child during the first 12 months after birth, or during the first 12 months after the placement of a child under age 18 with the employee.

Any paid leave benefits used in the first 6 weeks after childbirth, when eligibility is based on pregnancy or prenatal care, must be medical leave unless the employee chooses to use family leave. Certification of a serious health condition is not required for this use of medical leave.

Collective Bargaining Agreements.

The section exempting pre-existing CBAs expires December 31, 2023.

Confidential Records.

The ESD must publish on its website a current list of all employers that have approved voluntary plans under the PFML program.

Actuarial Services, Reports.

Calendar Year 2022.

The Office of Financial Management (OFM) must enter into a contract with a public or private entity for actuarial services to provide a report to the Legislature by October 1, 2022, on the following:

- the experience and financial condition of the PFML account;
- recommendations to modify the premium provisions in the PFML program to maintain long-term stability and solvency of the account; and
- a comparison of PFML premium provisions with similar provisions in other states with both paid medical and family leave insurance.

This contract is exempt from competitive procurement requirements. The ESD may share data with the OFM for the actuarial services. The OFM and ESD may request assistance from the State Actuary, including forming a data-sharing agreement between the State Actuary and the ESD for PFML actuarial purposes.

The Office of Actuarial Services (Office) is established within the ESD.

Calendar Year 2023.

Beginning January 1, 2023, the Office must report annually, by November 1, to the PFML Advisory Committee (Advisory Committee) on the:

- financial condition of the PFML account; and
- lowest future premium rates necessary to maintain account solvency in the next four years while limiting premium rate fluctuations.

The report must be submitted to the Legislature in calendar years 2023 through 2028. Beginning October 1, 2023, the ESD must report quarterly to the Advisory Committee on premium collections, benefit payments, the PFML account balance, and other program expenditures.

Legislative Task Force.

A legislative task force on PFML program premiums (Task Force) is created with members from both chambers and parties of the Legislature, the voting members of the Advisory Committee, and Governor appointees representing the Governor's Office and the ESD. Staff support for the Task Force must be provided by nonpartisan legislative staff.

The Task Force must review the reports to the Legislature and make recommendations for legislative changes to the premium provisions to ensure the lowest premium rates necessary

to maintain solvency while limiting fluctuations in rates.

The Task Force must issue a final report to the Governor and Legislature by December 30, 2022.

Joint Legislative Audit and Review Committee.

By October 1, 2024, JLARC must conduct a performance audit analyzing the implementation of the PFML program. The analysis must include, at a minimum, the following components:

- evaluation of the ESD's decision making and communication;
- determination of whether current methods are the most efficient available, improve service delivery, meet the needs of current and future workers, and are measurable;
- evaluation of whether the ESD prepares financial information in accordance with generally accepted accounting principles;
- evaluation of the PFML account solvency; and
- recommendations on administrative and legislative changes to improve PFML program efficiency while maintaining quality service.

The ESD may share data with JLARC for the purpose of conducting performance audits.

Other.

Beginning July 1, 2022, and until 12 months after the end of the COVID-19 state of emergency, the ESD must ask PFML program applicants whether their requested leave is related to the COVID-19 pandemic. Such disclosures are limited to monitoring potential impacts on the solvency and stability of the PFML account and subject to certain privacy and data sharing provisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 8, relating to contracting for actuarial services, which contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) The current version of the bill is essentially a vehicle to assess the program and its financial health, using both short- and long-term assessments. The bill should better position the Legislature and the PFML Advisory Committee to make any changes to this important program. The proposed policy changes should be easily incorporated into ESD's current work. The current problems with the PFML program were a surprise. The full PFML Advisory Committee supports this bill.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The content of the bill has changed over the course of session and is now designed to assess the structure of the program to understand its health. This will better position the advisory committee and the Legislature to substantially improve the program. A modified version of the investment in the House budget will help position the program for a better future. The issues raised with the program this session surprised everyone and this bill will help address those concerns.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): Senator June Robinson, prime sponsor; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; and Bob Battles, Association of Washington Business.

Persons Testifying (Appropriations): Joe Kendo, Washington State Labor Council and American Federation of Labor and Congress of Industrial Organizations; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): Lissa Kissler, Employment Security Department.

Persons Signed In To Testify But Not Testifying (Appropriations): None.