

SENATE BILL REPORT

HB 1087

As Passed Senate, April 6, 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: Passed House: 2/3/21, 96-0.

Committee Activity: Labor, Commerce & Tribal Affairs: 3/10/21, 3/17/21 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 4/6/21, 46-2.

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.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; King, Ranking Member; Braun, Robinson and Saldaña.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Matt Shepard-Koningsor (786-7627)

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.

Background: Paid Family and Medical Leave Program. In 2017, the Paid Family and Medical Leave (PFML) program was enacted through the passage of SSB 5975. SSB 5975 used a delayed effective date to repeal the Family Leave Act (FLA) on December 31, 2019, the day prior to PFML benefits becoming available on January 1, 2020. The PFML program contained employment protection, non-interference, and non-discrimination provisions equivalent to those in the FLA.

Private Right of Action. SHB 2614, enacted in 2020, added a private right of action to the PFML program. A private action may be brought against any employer by an individual employee or employees, or as a class action. A private action must be commenced within three years of the alleged violation date. A private right of action is only available to an employee who either has not filed a complaint with the Employment Security Department (ESD), has withdrawn a filed complaint with ESD, or has resolved a filed complaint with ESD.

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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Employers are arguing in court the Legislature took away certain employee rights with the passage of the PFML program and therefore, claims under the prior Family Leave Act are barred. Recently, courts have dismissed cases based on this argument. Without this bill, employees cannot enforce the strong protections under the law. This bill is a simple technical fix to state law that the courts have recognized is a loophole. This bill is needed to avoid confusion.

Persons Testifying: PRO: Representative Liz Berry, Prime Sponsor; Katherine Chamberlain, Washington State Employment Lawyers Association; Marilyn Watkins, Economic Opportunity Institute.

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