

SENATE BILL REPORT

ESSB 5097

As Amended by House, April 6, 2021

Title: An act relating to expanding coverage of the paid family and medical leave program.

Brief Description: Expanding coverage of the paid family and medical leave program.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Robinson, Conway, Darneille, Das, Hasegawa, Hunt, Keiser, Liias, Lovelett, Nguyen, Saldaña, Stanford, Van De Wege and Wilson, C.).

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/18/21, 2/10/21 [DPS, DNP].

Floor Activity: Passed Senate: 3/2/21, 29-19.

Passed House: 4/6/21, 55-42.

Brief Summary of Engrossed First Substitute Bill

- Expands the definition of family member in the Paid Family and Medical Leave (PFML) program.
- Requires the Employment Security Department to collect and analyze data and submit reports to the Legislature with certain information relating to the PFML program.
- Requires the general fund to cover additional leave expenses under certain circumstances.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5097 be substituted therefor, and the substitute bill do pass.

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

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.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, Honeyford and Schoesler.

Staff: Matt Shepard-Koningsor (786-7627)

Background: In 2017, the 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 820 hours in a qualifying period. Premium collection began on January 1, 2019, and benefits were payable as of January 1, 2020. The Employment Security Department (ESD) 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.

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. Serious health condition is defined by statute and has the same meaning as in the federal Family and Medical Leave Act and its regulations.

Definitions. Family member means the employee's child, grandchild, grandparent, parent, sibling, or spouse. Child means a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status. A military exigency relates to leave for short-notice deployments, military events, certain childcare and school activities for a military member's deployment activities, and other specified activities.

Summary of Engrossed First Substitute Bill: Definitions. The definition of family member is expanded to include any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care.

Reporting Requirements. ESD must collaborate with the paid family and medical leave advisory committee to collect and analyze disaggregated data relating to employment protections under the PFML program.

By December 1, 2021, ESD must submit a report to the Legislature with the following information:

- program utilization by employees covered under approved voluntary plans compared

- to employees covered under the state plan;
- program utilization by employees working for employers with 50 or more employees compared to employees working for employers with fewer than 50 employees;
- the number of employees who took leave from an employer and did not appear on that employer's subsequent quarterly premium reports after leave was completed; and
- the lengths of leave employees took for different purposes.

By June 30, 2022, and June 30, 2023, ESD must submit a report to the Legislature with the following information:

- the number of individuals who used leave under the PFML program as a result of the amended definition of family member in the act; and
- the effects, if any on the family and medical leave insurance account as a result of the amended definition of family member in the act.

Other. If the number of individuals utilizing leave under the PFML program as a result of the amended definition of family member in the act exceeds 500 individuals in any calendar year before July 1, 2023, the expenses of the additional leave must be paid by the general fund into the family and medical leave insurance account.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: All workers are paying into the fund and should be able to use it when needed. Paid family and medical leave has been a lifeline for many Washington families in 2020 and the law previously did not go far enough to protect people's jobs, include part-time workers, or cover specific families. The expanded definition of family member is important to promote equity by immutable characteristics. The bill would benefit important caretakers. Families of workers need these protections now more than ever. Paid leave should be a right not a privilege. The bill provides job security and health benefits to people needing it most, including women and women of color. Workers in large and small companies need the expansion in job protection provided by this bill. Other states have surpassed Washington by offering more equitable protections.

CON: The PFML program has not been fully-implemented and there is concern with changing it before seeing how the program operates. The small business assistance grant program has not been implemented yet and such businesses cannot afford these costs. The bill could increase taxes for Washington residents. This will have a disproportionate impact

on small businesses, requiring them to have the same standards as large corporations. This will be a deterrent for small businesses to provide health care benefits. Small businesses do not have the resources a large corporation does with respect to the job protection provision. PFML benefits were only payable for 60 days before the pandemic hit Washington. There is concern with changing a carefully balanced law that is only two-years-old, and not brought to the advisory committee. The close affinity language in the definition of family member is too expansive. There is concern about expansion and what that will do to coverage in cities relating to employee absences. The expansion of medical benefits is a significant and expensive change. PFML is not ready to become a catch-all leave program.

Persons Testifying: PRO: Senator June Robinson, Prime Sponsor; Marilyn Watkins, Economic Opportunity Institute; Linet Madrona-Bravo, citizen; Andrea Schmitt, Columbia Legal Services; Sybill Hyppolite, Washington State Labor Council, AFL-CIO; Laura Beal, citizen; Linet Madeja-Bravo, Member of MomsRising.

CON: Bob Battles, Association of Washington Business; Christine Brewer, Brewer Public Affairs; Julia Gorton, Washington Hospitality Association; Tammie Hetrick, Washington Food Industry Association; Candice Bock, Association of Washington Cities; Gary Smith, Independent Business Association.

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

EFFECT OF HOUSE AMENDMENT(S):

- Specifies that the definition of family member in the PFML program does not include an individual who resides in the employee's home with no expectation of care.
- Modifies the requirement that ESD collaborate with the PFML Advisory Committee on data collection requirements to a requirement that ESD develop the proposed plan for data collection in consultation with the PFML Advisory Committee.
- Removes requirements that ESD include certain data on employee leave use and returns in the first required report to the Legislature.
- Requires ESD to provide an opportunity for members of the PFML Advisory Committee to comment in each required report to the Legislature.