

SENATE BILL REPORT

SB 5649

As Reported by Senate Committee On:
Labor, Commerce & Tribal Affairs, January 26, 2022
Ways & Means, February 7, 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: Senators Robinson, Conway, Lovick, Randall and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/13/22, 1/26/22 [DPS-WM, w/oRec].

Ways & Means: 2/04/22, 2/07/22 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- Provides that an allowable purpose for family leave is any leave taken by an employee during the seven calendar days following the death of the family member for whom the employee would have qualified to take medical leave for the birth of their child or would have qualified for family bonding leave.
- Specifies that leave taken by certain employees in the first six weeks after giving birth must be medical leave unless the employee chooses to use family leave.
- Expires the collective bargaining agreement exception contained in the Paid Family and Medical Leave (PFML) program.
- Requires the Employment Security Department to publish a list of employers with approved voluntary plans on its website.
- Contains provisions on short- and long-term actuarial services assessing the financial condition of the PFML program to maintain financial stability of the family and medical leave insurance account.

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.

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

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5649 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Schoesler.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5649 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Billig, Carlyle, Conway, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Rivers, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senator Schoesler, Assistant Ranking Member, Capital.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Ranking Minority Member, Capital; Braun, Muzzall, Wagoner and Warnick.

Staff: Joshua Hinman (786-7281)

Background: Paid Family and Medical Leave Overview. 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 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.

Paid Family 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. Paid medical leave benefits are provided for an employee's own serious health condition. A serious health condition is defined by statute and has the same meaning as in the federal Family and Medical Leave Act and its regulations. A serious health condition includes, among other things, any period of incapacity due to pregnancy or for prenatal care.

Certification of Serious Health Condition. If applicable, when applying for paid family or medical leave, ESD requires the employee to submit a certification of a serious health condition form. The form contains information provided by the employee and their health care provider.

Collective Bargaining Agreements. The PFML program does not require any party to a collective bargaining agreement (CBA) in existence on October 19, 2017, to reopen negotiations of the CBA or to apply any of the rights and responsibilities under the PFML program unless and until the existing CBA is reopened, renegotiated by the parties, or expires.

Confidential Records. Information or records relative to the administration of the PFML program are private and confidential, however, there are certain exceptions determined by where the request originates. Based on this confidentiality, 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 a committee comprised of an equal number of House and Senate members, Democrats and Republicans. JLARC conducts performance audits, program evaluations, sunset reviews, and other analyses. Assignments to conduct studies are made by the Legislature and JLARC itself. Based on these assignments, JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, independently seek answers to audit questions and issue recommendations to improve performance. JLARC's audits are directed to be independent, objective, and accurate.

Summary of Bill (Second Substitute): "Postnatal" means the first six weeks after birth.

Paid Family 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.

Paid Medical Leave. Any paid leave benefits used in the postnatal period by an employee eligible for benefits based on a period of incapacity due to pregnancy or for prenatal care must be medical leave unless the employee chooses to use family leave during the postnatal period. The maximum and minimum weekly benefits, duration, and other conditions and limitations established in the PFML program still apply.

Certification of Serious Health Condition. A certification of a serious health condition form is not required for paid leave benefits used in the postnatal period by an employee eligible for benefits based on a period of incapacity due to pregnancy or for prenatal care.

Collective Bargaining Agreements. The CBA exception in the PFML program expires December 31, 2023.

Confidential Records. 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 account;
- recommendations to modify the premium provisions in the PFML program to maintain long-term stability and solvency of the account; and
- comparing 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. OFM and ESD may request assistance from the Office of the State Actuary (State Actuary), including forming a data-sharing agreement between the State Actuary and ESD for PFML actuarial purposes.

Calendar Year 2023. The Office of Actuarial Services (Office) is established within ESD. Beginning January 1, 2023, the Office must report annually, by November 1st, to the Paid Family and Medical Leave Advisory Committee (Advisory Committee) on the:

- financial condition of the Family and Medical Leave Insurance Account (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, ESD must report quarterly to the Advisory Committee on premium collections, benefit payments, the 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 ESD. Staff support for the Task Force must be provided by nonpartisan legislative staff. The Task Force must convene its first meeting by November 4, 2022, and issue a final report to the Governor and Legislature by January 4, 2023.

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 ESD's decision making and communication methods;
- determination of whether current organization and service delivery models are the most efficient available, and whether they meet the needs of current and future workers;
- evaluation of whether ESD prepares financial information in accordance with generally accepted accounting principles;
- evaluation of Account solvency; and
- recommending administrative and legislative changes to improve PFML program efficiency.

Other. Beginning July 1, 2022, and until 12 months after the COVID state of emergency, 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 Account and subject to certain privacy and data sharing provisions.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Allows OFM to contract with either a public or private entity to provide the actuarial services.
- Provides the ability to contract with an entity without engaging in a competitive procurement.
- Amends the powers and duties of the State Actuary to provide family and medical leave actuarial assistance as requested by either ESD or OFM.
- Authorizes a data-sharing agreement between ESD and the State Actuary for the purpose of performing family and medical leave actuarial assistance.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Provides that an allowable purpose for family leave is any leave taken by the employee 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 for bonding with their child during the first 12 months after birth, or the first 12 months after the placement of a child under 18 with the employee.

- Removes the section that provided a process for an employee to apply prior to their qualifying event and to receive a predetermination from the ESD.
- Establishes an actuarial office within ESD, which must report annually during the calendar years 2023 through 2028, on the financial condition of the PFML program and requires ESD to report on specified fiscal areas of the PFML program.
- Requires ESD, beginning July 1, 2022, and until 12 months after the COVID state of emergency, to ask paid family and medical leave applicants to disclose whether their taking leave is related to the COVID-19 pandemic.
- Requires ESD to report quarterly to the Advisory Committee on premium collections, benefit payments, the Account balance, and other program expenditures beginning October 1, 2023.
- Creates a legislative task force on PFML program premiums, and requires a JLARC report.
- Requires OFM to coordinate with another agency for actuarial services relative to the PFML program and report to the Legislature by October 1, 2022.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 8, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Tribal Affairs): *The committee recommended a different version of the bill than what was heard.*

PRO: This bill contains minor fixes to issues we have heard from ESD, employees, and employers. This bill will help the PFML program operate more effectively. The current requirement that pregnant individuals wait until the medical event has occurred and then submit the application for leave creates issues. A client had pregnancy complications and postpartum depression and ended up missing the application deadline. I had all of my paperwork ready to apply for pregnancy leave but found out I could not submit my application until my event occurred. This bill allows individuals to apply 45 days in advance. If I had the extra time, it would be one less thing to stress and worry about. This bill aims to make small but deeply meaning modifications to the PFML program. We think it is necessary that people can plan for leaves accordingly. I made a mistake while filling out my application for pregnancy leave and that could have been avoided with the fixes in this bill. This bill makes simple and necessary fixes to the PFML program. In 2014, before the PFML program, I used up my vacation and other paid time off caring for my mother until she passed away and used an additional two weeks to assist my father. This bill would

have saved me a lot of stress during the most difficult year of my life.

CON: We are concerned the bill creates a new benefit of bereavement leave for employees caring for family members. We just saw a 50 percent rate increase without this change.

OTHER: We do not have any concerns with the bill as written, but we would request clarity on the provisions relating to leave taken concurrently under the PFML program and the federal Family and Medical Leave Act. We agree with the need for predeterminations and public posting of employers with voluntary plans. The 14 days should be offered and not automatic.

Persons Testifying (Labor, Commerce & Tribal Affairs): PRO: Senator June Robinson, Prime Sponsor; Suzanne Pak, Korean Women's Assoc; Sasha Buz; Samantha Grad, UFCW 21; Lauren Hipp, MomsRising; Marilyn Watkins, Economic Opportunity Institute; Julia Gorton, Washington Hospitality Association.

CON: Tom Kwieciak, Building Industry Association of Washington.

OTHER: Robert Battles, Association of Washington Business (AWB); Briahna Murray, Contract Lobbyist for Cities.

Persons Signed In To Testify But Not Testifying (Labor, Commerce & Tribal Affairs): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The department provided late notice of the program's financial situation. The task force, JLARC, and actuarial assistance are critical and necessary to make an assessment to understand what is going on with the program and address any concerns. A third party analysis will result in policy recommendations for the 2023 Session. This bill puts the Legislature in a better position to make needed adjustments in the future.

It is expected that this bill will fold easily into the program. Recognizing the postnatal period as a medical condition by default is correct because it is a medical necessity for birthing mothers to have that time off. Allowing for seven days after the death of a child is for compassion, whereas current policy is to notify a recipient that their leave is now over.

Persons Testifying (Ways & Means): PRO: Joe Kendo, Washington State Labor Council, AFL-CIO; Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.